



**CHANGING PATTERNS OF MUSLIM FAMILY IN
INDIA WITH SPECIAL REFERENCE TO THE
MARRIAGE AND DIVORCE:
A REVIEW OF LITERATURE**

DISSERTATION

SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR THE AWARD OF THE DEGREE OF

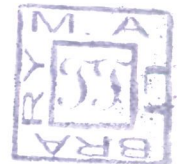
**Master of Philosophy
in
Sociology**

By

SYED NARJIS MAHMOOD

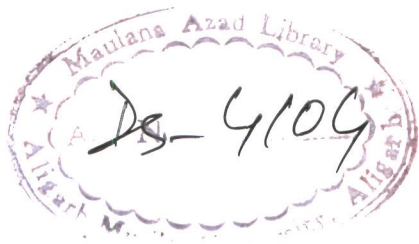
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Certificate

This is to certify that **Ms. Syed Narjis Mahmood** has completed her dissertation entitled "Changing Patterns of Muslim Family in India with Special Reference to Marriage and Divorce: A review of Literature" under my supervision. I understand the work is suitable for submission for the award of M.Phil degree in Sociology.

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ACKNOWLEDGEMENT

Praise to almighty Allah for his countless and innumerable invisible conspiracies to shower me with the necessary courage, vision, determination and faith, for making this dream into a reality. It is surely Allah's benevolent hand who generated in me the desire to hunt for realities and complete this work.

I owe my special and profound thanks to Prof. Abdul Matin, Chairman Department of Sociology and Social Work, A.M.U, Aligarh, for his able guidance and inputs throughout my stay in the department and especially during the research period. I must thank him for extending to me the necessary facilities in the department and seminar library whenever needed, to make my research exercise sail smooth.

I am extremely thankful to my supervisor, Dr. Nemat Ali khan, Associate Professor, Department of Sociology and Social Work, for giving me his helping hand at the most difficult phase of my work. He brought me out of the tempest when there was no one around and gave me his support and love. His able guidance and critical approach always made me to face the rough waters with ease and get my boat sailing.

I am also grateful to all my teachers Prof. Noor Mohammad, Dr. Abdul Wahid, Dr. Syed Zainuddin, Dr. P.K Mathur, Dr. Md Akram, Dr. (Mrs.) Shreen Sadiq, Dr. (Mrs.) Sameena, Dr. Raziya Shahani, Mr. Naseem Ahmad Khan, Dr. Tahir and Mr. Afzal who kept the pressure on me by their sympathetic enquiries and advised me on various conceptual and theoretical issues related with the study.

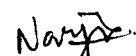
I am grateful enough to U.G.C. for granting me the fellowship that really helped me to devote my energies fully into the research work. My thanks are also due to the seminar library in charge Dr.

Ibne Hasan and staff of Maulana Azad Library, A.M.U, Aligarh needs to be acknowledged for making me available the necessary research material and facilities to carry out my research work smoothly.

I must thank my seniors Mr. Sohail Akhtar, Mr. Arif Mughal, Dr. Raj Kumar, Mr. Mujahid, Dr. (Mrs.) Charul Sharma, Ms. Sadaf Nazir, Ms. Shazia Naseer, Ms. Seema Kumari, Ms. Bushra Asad, Ms. Frah Sultana Farooqi, Mrs. Suniti Bala, Ms. Uzma Khatoon for making my thoughts mature and diversified through innumerable and countless versatile discussion.

Throughout this journey, I received invaluable support and encouragement from my friends especially Tamanna khan, Andalib Zehra, Arpita, Mohd. Swalehin, Ajaz Ahmad Gilani, Anwar-ul-Sadaat Shah, Abdus Salaam, Masoud Bashartullah, Mohd. Basim Zahid, Farha Rizwan Khan, Heena, Syed Faisal, Syed Rashid for making my life meaningful and colorful myriads of ways, sometimes with playful prank, sometimes with a positive feedback, sometimes with a criticizing remark and sometimes with a casual smile and whose timely help enable me to complete my work in time.

Last but not least I feel privileged to acknowledge the contribution of my family in my every act, dream and endeavor. I don't have words to thank my parents for their untiring faith and support in my every decision and my every dream. I feel short of words to my parents for their everlasting moral support, affection and patience without which it would have been impossible for me to accomplish the arduous task for completing this dissertation.


Syed Narjis Mahmood

CHAPTER-1

INTRODUCTION

- Female Infanticide
- Marriage
- Divorce
- Inheritance
- The Advent of Islam

CHAPTER – I

Introduction

An understanding of Islam as a religion is necessary in order to comprehend its effect on the built environment. Islam is the second largest religion of the world. Islam is the system of beliefs, rituals & practices traced back to the prophet Muhammad (PBUH) (570-632) who reportedly started his mission in Arabia in 610. Islamic law is contained in the Muslim holy book, the Qur'an, as revealed to Muhammad (PBUH) over the course of twenty three years. Currently over a billion Muslims live in Europe, Asia, Africa and North America, who inhabit forty predominantly Muslim countries & five continents, are traversing a diverse geographical and cultural area. As Islam spread and established itself some of the many local cultures & customs, became assimilated into Islamic practices. Thus, there may be slight variation on classical Islamic practices from country to country. There are also variations between the two major sects of Islam: The Sunnis & the Shiite. Although Muslims vary in their particular religious practices & cultural beliefs, the majority follow the same basic tenets of Islam (www.encyclopedia.com).

Muslims rely on the Qur'an for the fundamental Islamic teachings and guideline for their lives. Aside from the teachings in the Qur'an, Muslims also believe that Muhammad led an exemplary life that all Muslims should attempt to emulate. These examples can be found in the Hadith, the document reports of prophet's life, which Muslims also rely on for spiritual & practical direction.

Every Muslim required to follow the five pillars of Islam which are obligatory practices outlined in the Qur'an-

- Worship of only one God (Toheed)
- The canonical prayers or Salat, five times in a day
- Fasting (Roza)
- The obligatory offering for Charity (Zakat)
- Pilgrimage or (Hajj)

From the oasis cities of Makkah & Madinah in the Arabian Desert, the message of Islam went forth with electrifying speed. Islamic civilization grew rapidly after the death of Muhammad (PBUH) in 632.

More over the spread of Islam was not limited to its miraculous early expansion outside of Arabia. During later centuries the Turks embraced Islam peacefully as did a large number of the people of Indian subcontinent. In Africa also, Islam has spread during the past two centuries even under the mighty power of European colonial rulers. Today Islam continues to grow not only in Africa but also in Europe and America where Muslims now comprise a notable minority.

Islam was destined to become a world religion and to create a civilization which stretched from one end of the globe to the other. Already during the early Muslim caliphates, first the Arabs, then the Persian & later the Turks set about to create classical Islamic civilization. Later in the 13th century, both Africa & India became great centres of Islamic civilization and soon thereafter Muslim Kingdoms were established in the Malay Indonesian world while Chinese Muslim flourished throughout china.

India, so commonly described as the land of the Vedas and the home of the Hindus. It is also the motherland of the largest Muslim population found in any single country of the world. According to 2001 Census Muslim constitute 13% of the total population in India.

As for India, Islam entered into the land east of the Indus river peacefully, gradually Muslim gained political power beginning in the early 13th Century. But this period which marked the expansion of both Islam & Islamic culture came to an end with the conquest of much of India in 1526 by Babur, One of the Timurid prince. He established powerful Mogul empire which produced such famous rulers as Akbar, Jahangir & Shahjahan and which lasted, despite the gradual rise of British power in India, until 1857 when it was officially abolished.

Later Muslims participated in the freedom movement against British rule along with Hindus. And when independence finally came in 1947, they were able to create their own homeland, Pakistan, which came into being for the sake of Islam & become the most populated state although many Muslims remained in India. In 1971, however the two parts of the State broke up, East Pakistan became Bangladesh. With the total of an estimated 365,000,000 Muslims in the world today, approximately every seventh person is a Muslim,

and of these nearly every third one belongs to the combined area of Pakistan, India & Kashmir.

There are different institutions like family, marriage, kinship etc in our society, contribute to the maintenance of the society but now certain changes have been taken place in these institutions & society becoming industrial, urbanized, capitalist modern society and characterized by traits such as forward, scientific rational etc.

Family is the universal social institution, sociologically speaking, a family is a social group to two or more people who live together & are related by marriage, blood or adoption. Every society need some form of social arrangement to regulate sexual relations & to provide for child rearing & socialization. Family has survived through the ages because it provides a number of essential social functions. Yet there are wide variation in the structure & pattern of family (Abraham, 2006: 155-156).

Family is one of the important institutions of society and basic social unit, undergoing change, both in its structure & function. Changes have taken place due to education, urbanization, industrialization, impact of modernization & westernization. Though there are several religious communities in India like Hindus, Muslims, Sikhs, Parsis, Buddhists and Christians. Family is a universal social institution and no society exists without this institution.

As we are concerned with the Muslim family so through the impact of globalization, changes have also taken place in the family patterns of Muslims alike. In Islamic culture, the family is one of the core values being the basic element & foundation stone of the community of Muslims called “Ummat” in Arabic. The term family in Islam is used to designate a special kind of structure whose principles are related to one another through blood ties/or marital relationship and whose relatedness is of such a nature as to entail mutual expectations that are prescribed by Islam, reinforced by Islamic law, internalized by the individual Muslim practice (Ajijola, 1999: 10-12).

In the Muslim community marriage is universal for it discourages celibacy. Islam has almost made it compulsory. Prophet Mohammad (PBUH) also stressed that married life is preferable to unmarried life. Both the main sects within Islam called ‘Sunni’ and ‘Shias’ consider marriage almost obligatory (Rao, 2004: 342).

The prophet (PBUH) has said “there is no celibacy in Islam. Islam, unlike other religion is a strong advocate of marriage. Marriage is a religious duty and is consequently a moral safeguard as well as a social necessity. Islam does not equate celibacy with high ‘taqwa’/ ‘Iman’. The prophet has also said ‘Marriage is my tradition who so ever keeps away there from is not from amongst me’ (www.islamawareness.com).

Islamic family laws encapsulate primarily those areas of the Sharia that deal with marriage, divorce, maintenance, succession etc. The principal sources of the sharia & Islamic family laws, the Quran & Sunna, represent progressive values; the legal regulations that are extrapolated from both these sources advocate in particular welfare of women & children. The Quran & Sunna introduced substantial improvements in the standing of women (Journals.permissions@oxfordjournals.org).

Before turning to the reform brought about by the Islamic law to elevate the status of women, it may be useful to look at the status & position of women in pre-Islamic era. For it is said that a civilization may be measured by the status & position held by its women. In order to assess the effect of Islam on the status of women, one must go to the pre-Islamic condition of women so that the trends of reforms may be traced (Ephroz, 2003: 25).

Islam has its roots & beginnings in the tribal society of Arabs of the 7th century of the Christian era. The pre-Islamic Arab society did not recognize the individual as it was centered round a tribe or a kindred. It was the group, not the individual that claimed all the right (kapadia, 1972: 31).

The most striking characteristic of Arabian society is its diversity. Arabia was comprised of diverse communities with different customs, languages & life styles. As the social & cultural norms varied from place to place, so did women’s rights. The Arab peninsula was divided into two regions, the arid area of the North & rainfed area of the South. The Southern region was blessed with resources of soil & climate. Because of its fertile land, it’s proximally to the sea and its strategic location on the commerce routes, the south had enjoyed throughout its earlier history a developed form of political life and an advanced culture. As a confederation of states, the region was heavily populated & governed by different kingdoms at different times in its history; it was as a result greatly influenced by foreign cultures and religions such as Christianity, Zoroastrianism & Judaism. The people of

the South were not Arabs but Sabians or Himyarites of Semitic descent and spoke a Semitic language of their own (www.mwlusa.org/topics/history/herstory.html).

On the other hand, the Northern population was itself diverse. The Northern region was inhabited primarily by two groups: the Bedouins and settled tribes. The Bedouins were tough, resourceful and as shepherds, constantly on the move. On the outskirts of the deserts, there was a ring of oasis where the tribes had settled. Most of the important settlements were in western Arabia, such as Najran, Mecca, Yathrib (medina) & Taif. The settled tribes relied on agriculture or commerce for their livelihood. Their spoken language was Arabic (www.mwlusa.org).

The Arabs were habituated to constant warfare. The essential features of Arab society reflect the tribal system of life. The tribal structure and customs that had the greatest impact on women's rights. The tribe was the main unit of the society before Islam. Each tribe consisted of a group of kindred clans: every clan was made up of members of a 'hayy' which was an encampment of tents, each tent represented a family. While a number of clans went on to make a tribe or qabilah. Kinship & blood, regarded as a matter of great pride & on which the tribal system ultimately rested, formed the primary criterion of the clan (Shaukat Ali, 1987: 5-6).

The bond of the blood connected together all members of the same tribe, who submitted to the authority of one chief (Shaeikh), the tribe's chief was usually selected by the clan elders from one of the prominent families, and acted as an arbitrator to the internal conflicts. 'Banu' (children of) was the title with which they prefixed their joint names. The fact that certain clan prefixed their names with feminine names is perhaps an indication of an ancient matriarchal culture that existed in Arabia long before Islam. Group solidarity ('asabiyah') was the spirit of the tribe. It signified conditional loyalty to fellow tribesmen. "Be loyal to the tribe" was the motto of the time. The clan's claim upon its members was strong enough to make a husband give up his wife (www.mwlusa.org).

It must be noted that due to the absence of an organized political authority in that society, both Bedouin & sedentary, no systematic government or judiciary existed and the family and criminal law was dominated by the ancient Arabian tribal system. In this system there was an absence of legal protection for the individual outside his tribe. In other words, if a member of a tribe committed murder within his clan, none would defend him. If the

murder was committed outside his clan, a vendetta was established, mitigated by the institution of blood, money or Qisas where any fellow member of a clan would have to pay for it with his own life. Thus blood, according to the desert Arab, called for blood vengeance was the only recognized chastisement. Hence vengeance with the Arab was a tormenting thirst which could only be satiated by blood (Shaukat Ali, 1987: 3-4).

Laws & customs in this tribal society varied from one to another. For this reason we find different accounts of women's status during the days of Jahiliyyah. On the one hand, there are indications that women held high positions in the society and exerted great influence. They freely chose their husbands, had the right to divorce & would return to their own people if they were not happy or well treated. In some cases, they even proposed marriage. They were regarded as equals, not as slaves & were the inspiration of many poets and warriors (Nicholson, 1966: 88).

The women enjoyed a considerable portion of free will, and her decision would most often be enforced. She was to highly cherished that blood would be easily shed in defense of her honor. In fact, she was the most decisive key to bloody fight or friendly peace. These privileges notwithstanding, the family system in Arabia was wholly patriarchal. But Arabia before Islam was a society where there were no rules, except that strong dominated the weak. In fact, alongside examples of strong & independent women, there are numerous reports of women having an inferior status.

1.1. Female infanticide:

In the pre-Islamic period, Women were in a very lowly status in Arabia. An Arab man would look at a woman as a source of shame & humiliation. If a father was given the news of the birth of a girl, he would be extremely distressed, wondering whether he should have the humble option of keeping her or that of burying her alive. God described this in the Qur'an: "When any of them is given the happy news of the birth of a girl, his face darkens & he is filled with gloom. He tried to avoid all people on account of the (allegedly) bad news he has received, (debating within himself) shall he keep the child despite the shame he feels, or shall he burry it in the dust? Evil indeed is their judgment" Q 16:58-59 (Yamani, 2005:25).

The reasons assigned for female infanticide during the days of ignorance are several but non of them is justifiable. This practice is totally condemned & banned by the prophet of Islam. One of the reasons forwarded for such a practice is that poverty-stricken parents felt food to be insufficient for all the offspring, so they preferred to do away with the females. Another reason was that women could not go to war & there by procure means of livelihood. Also there existed the fear of females being taken captive during the wars, there by bringing shame to the family (Shaukat Ali, 1987:4).

1.2. Marriage:

The Muslim law of marriage is said to be the reformed shape of pre-Islamic law of marriage in Arabia. Among the Arabs nikāh, 'marriage', is a wide term, comprising many different form of sex relationship (Fyzee, 1974: 90).

The institution of irregular sexual relations was prevalent in Pre-Islamic Arabia. Multiple & loose forms of unions & promiscuity were quite customary among the ancient Arabs and many of them could hardly be called marriage in the modern era (Ephroz, 2003:26).

Following forms of marriage existed in pre-Islamic Arabia at one time or another:

Marriage by Agreement: This was usually an agreement between the man and the woman's family. If the husband was from another tribe, the women often left her family and found a permanent home in her husband's tribe. The tribe which received the woman kept her children, unless there was a special contract to restore the offspring of the marriage to the mother's people. The children were, therefore, of the tribe's kin and not of the mother's. In some other tribes, it was customary that the women did not leave her own tribe but either married someone within the tribe or a married a stranger who agreed to stay with her family. In this case, the children belonged to the mother's tribe and grew up under their protection. The women of these tribes enjoyed more freedom, and had the right to dismiss their husbands at will. If they lived in a tent they turned it around, so that if the door faced east, it now faced west, and when the man saw this, he knew that he was dismissed and did not enter.

Marriage by Capture: This was a universal practice before Islam. In times of war, women were often captured and taken to the slave market of a trading place such as Mecca and sold

into marriage or slavery. It was Islam that made women immune to attack or capture in war time. In this marriage, the woman followed her husband and bore children who belonged to him. She became his property and completely lost her freedom. Her husband had absolute authority over her, including the exclusive right to divorce. Accordingly, in this kind of marriage, which has been classified as a “marriage of dominion” (“Ba’al”), the husband was called the woman’s lord or owner, not just in Arabia but also among the Hebrews.

Marriage by purchase: In this marriage, the woman’s family gave her away for a price, also called the dowry (“mahr”), which usually consisted of camels and horses. It replaced marriage by capture when the tribes began developing friendly relations, but it brought the woman practically into the same oppressive conditions as a captive wife. The emergence of this type of marriage perhaps contributed to the decline of female infanticide. Selling a daughter for a large dowry became much more profitable than burying her in the ground. It was a point of honor not to give away a woman in an unequal match. The Arabs, therefore, were not inclined to sell their daughters too cheap, and required substantial compensation for their loss.

Marriage by Inheritance: This was a widespread custom throughout Arabia, including Medina and Mecca, whereby the heir of the deceased inherited his wife. He could then keep her as a wife, give her away in marriage for a dowry or forbid her from remarriage altogether. In the Jahiliyyah, when a man’s father or brother or son died and left a widow, the dead man’s heir, if he came at once and threw his garment over her, had the right to marry her under the dowry of her deceased husband or to give her in marriage and take her dowry. But if she anticipated him and went off to her own people, then the disposal of her hand belonged to herself. The marital rights, therefore, were rights of property which could then be inherited and sold, if the heir so pleased. This type of marriage, which was abolished under Islam, was also common among the Semites.

Temporary (“Mot’a”) marriage: this was a purely personal contract founded on consent between a man and a woman without any intervention on the part of the woman’s family. There was no need for witnesses. In this type of marriage, the woman did not leave her home, her people gave up no rights which they had over her, and the children of the marriage did not belong to the husband, nor were they entitled to an inheritance. Another legend of ancient Arabia, Omm Kharija, was said to have contracted marriages in more than

twenty tribes, and lived among her sons. This indicates that the children of the marriage did not follow their respective fathers. For this marriage to take place, all that was needed was that the man should say "suitor" and that she should reply "I wed." and the marriage was straightway accomplished without a witness. This marriage was practiced mostly by strangers and travelers, in return for a price payable by the man to the woman. Because of this price, the woman could not dismiss her husband for a certain length of time that she had agreed to upon marriage.

There were other types of marriage or cohabitation such as secret cohabitation, which has been frequently described in Arabic poetry. In this case, the woman only received occasional visits from the man she loved. The man often belonged to a hostile tribe and visited his lover in secret. Although the poets usually boasted of them as forbidden love affairs, the relations were usually well-known and not a cause of shame or punishment for the woman; the secrecy was simply a matter of etiquette. Marriage by exchange was another form of marriage where a man could exchange his wife or daughter with another man's wife or daughter without having to pay a dowry. Polygamy (marrying more than one wife) was also commonly practiced, not just by the Arabs but Jews and Christians as well. It is reported that a man could have as many as 100 wives. There are also indications that polyandry (marrying more than one husband) existed which had its roots in an ancient, matriarchal culture. Wife-lending was a practice whereby husbands allowed their wives to live with "men of distinction" to produce noble offspring. The husband, who abstained while his wife lived with the other man, would then be socially considered the father of the child. In some tribes, service marriage was common. When a man was unable to pay the dowry, he agreed to serve the girl's father or kin for a period of time sufficient to earn the bride price. In experimental cohabitation, allowed in some tribes, men could live with young women before marriage. If they liked each other, they would enter into a marriage agreement. Otherwise, there was no commitment on either side. A man could also have as many concubines as he could afford. Keeping concubines coexisted with polygamy among the Semites for two basic reasons. Childless wives preferred their husband's living with slave girls than marrying another free woman. When the slave gave birth, the child was identified with the wife of her master. The second reason was that polygamy was costly and it was more economical to keep concubines instead ('Abd al' Ati, 1977: 98-102).

Women of Mecca were in a relatively better position than women in Medina, although marriages by capture and purchase were also practiced in Mecca. Bedouin women, on the other hand, enjoyed more freedom and asserted themselves more strongly than women of the sedentary tribes. The reason for this perhaps was due to the conditions of nomad life, which "made the strict seclusion of women impossible, and so it allowed for the development of a more independent female character. Although the Bedouin woman lived in a polygamous family and under a marriage of dominion, she could freely choose a husband and leave him if not treated well.

It can be concluded then that marriage in pre-Islamic Arabia was defined by the prevailing customs of the tribes, and influenced by the Jewish and Christian traditions. What preserved any sense of dignity for women under the humiliating conditions of most marriages was the weight attached to the bond of blood. In Arabia a woman did not change her kin on marriage and continued to have a claim on the help and protection of her own people. Although the marriage agreement often gave her husband complete control over her, a woman's tribal affiliations set her apart from the slaves who had no helpers. A man was encouraged not to marry a woman from his own tribe so that she would have no kin nearby to take her side, thereby preventing ugly family feuds. The advantage of kinship naturally disappeared if the husband took his wife to a remote region. In this case, she was no longer a free woman. In one incident, the Jews of Medina ventured to insult an Arab woman married to a citizen of Medina, because she was of a strange kin, who had no one to protect her. This is why under some marriage agreements the husbands were prevented from carrying their wives away to strange places.

Of all the different forms of marriage and cohabitation practiced in pre-Islamic Arabia, only marriage by agreement slightly resembles the form of marriage permitted under Islam. But what sets the Islamic marriage apart from the pre-Islamic practices is that Islam acknowledged woman as a human entity with rights of her own. Marriage, therefore, became a contract between a woman and the man she had chosen to marry, and the dowry became a gift to her, rather than to her father.

1.3. Divorce:

As marriage was often an arrangement between the husband and the woman's father, so was divorce. To cancel the marriage and get his daughter back, the father had to return the dowry or purchase price. But if a husband did not get back the dowry, the woman could not be free because the husband had purchased the exclusive right, similar to the right of property, to use the woman as a wife. Upon divorce, a divorced woman could also be claimed by her ex-husband's heirs, just as she would be upon his death. While Islamic law forbade remarriage to a woman who was divorced in pregnancy, in pre-Islamic Arabia, a pregnant divorced woman could be taken by another man under agreement with her former husband.

1.4. Inheritance:

Women were usually excluded from inheriting from their families. The reason for this inequity again has to do with the tribal structure of the society where the strength of each tribe depended on the ability of its members to participate in war. This resulted in inheritance being based on the principle of "comradeship in arms;" since men were physically stronger and better fighters, it led to the exclusion from inheritance of women, minors of both sexes and invalids as well as in the preference of the paternal to the maternal lines (www.mwlusa.org).

If a woman did have the rights of inheritance, it was usually among the tribes where there were still traces of an ancient matriarchal culture which dictated that the woman remain with her tribe after marriage. In this case, whatever she inherited would stay within the tribe and pass on to her children who belonged to her kin. In other type of marriage where the woman left her tribe, her rights of inheritance were reduced as much as possible, since her inheritance would fall in the hands of another tribe.

In places such as Medina, where marriage by purchase was the rule, her condition was woman much worse. She could not inherit because she herself was part of her husband's estate to be inherited. In fact, when Islam mandated that sisters and daughters were entitled to a share of inheritance, men of Medina protested against the rule.

1.5. The Advent of Islam:

In most tribes of pre-Islamic Arabia, it has been shown women were deprived of their basic rights, such as the right to choose a husband, to divorce, and to inherit from their family. In some other religions, they had a better position. They could marry and divorce at will, engage in trade and hold property. What dictated the status of women, therefore, were the tribal customs and traditions. In the absence of a central government, it was the tribe who served as the highest legal authority.

The advent of Islam shifted the focus from the tribe to the individual, balanced by the concept of community and family, and instituted a system in which everyone was equal, regardless of his/her gender, race, age or wealth. Under Islam, it was the moral and religious principles, not tribal affiliations that defined women's rights. Islam acknowledged women as free human beings with full rights of their own. With freedom must come responsibilities and obligations. This has led some to argue that women were more restricted after Islam, which may in fact be true in a few tribes that were not as oppressive to women as others. However, Islam improved the conditions of all women, regardless of which tribe they belonged to. It restored women's dignity and elevated their status, on the whole, to be equal to that of men.

The advent of Islam brought profound changes to the Arabian society in general and to women in particular. Islam reversed or abolished the repressive and cruel practices of crime committed against women such as female infanticide. Where women's rights were taken away or ignored, Islam restored them, and where women enjoyed any degree of freedom, Islam reinforced and enhanced it. Islamic teachings emphasized the fact that general principles of equality, freedom, independence and rights of women are not to be confined to or defined by social or cultural norms, but that they are ordained by God. The primary goal of divine law (Shari'a) is to institute justice in the land, to eliminate injustice and protect the human rights of all member of society, regardless of their gender, race or religion. Islam, therefore, sought to secure the rights of not only women but also those of minorities such as Christians, Jews, orphans and slaves who were also subjected to abusive treatment at the time. Islam elevated the status of women to one equal to that of men and secured their legitimate rights- rights that women, for centuries, were deprived of not only in Arabia, but all over the globe (www.mwlusa.org).

CHAPTER-2

INSTITUTION OF FAMILY

AND

MARRIAGE

- Institution of Family
- Family in Islam
- Institution of Marriage
- Marriage in Islam
- Polygamy
- Dower

CHAPTER – II

Institution of Family and Marriage

2.1. Institution of Family

Thirty years ago the family was held as a symbol of the social order, structured in terms of norms and roles. It was a sacred and important institution within society. Nowadays social changes have created a dysfunctional home-sphere that perpetuates the inadequacies of society. The Family today seems to be a troubled institution. The divorce rate is high, the number of separations is large, and illegitimacy has tripled in the last two decades, as has the rate of delinquency. These facts disturbing to many persons, because the home is the place where the personal and social virtues are developed (Ogburn & Nimkoff, 1964: 602).

Family represents both an institution as well as an association. It is the oldest among the other institutions and associations. Due to these reasons amongst all associations' and institutions of mankind the family is rendered to be the most stable and enduring. As a primary group, the family is the first and most universal of all forms of associations. It is the core of all social organizations, remaining in some even in the most complex system.

Sociologically speaking, a family is a social group of two or more people who live together and are related by marriage, blood or adoption, performing roles based on age, sex and relationship, and socially distinguished as making up a single household or a sub household. In this sense, a family is made up of not only husband and wife, but also two brothers living together or a woman and her adopted son (Abraham, 2006: 155).

So the simplest, the smallest and the oldest form of human society is family which is comprised by wife, husband and children. A number of bonds and ties join the members of a family to each other. It would not be wrong to say that family has been an universal institution in society. Human being is a social animal and social animal undoubtedly implies that human being is encompassed by a society. Thus to study the nature of human beings in relation to their society one has to study the social structure which is comprised by families. A family is a social system or network of interpersonal relationships.

Family exists everywhere and has existed throughout the human existence on this planet. Everyone belongs to at least one family and virtually everyone lives in one or more

family groups. The family is the every cradle of human nature. The term family embraces tremendous range of characteristics, behavior and experience. The family is the social unit for bringing the children into the world. Family experience is necessary to turn a new born infant into a fully human being with values and standards and the ability with other people. The family is the first line of defense, especially for children and a major factor in their survival, health, education, development and protection. It is also a major source of nurturance, emotional bonding and socialization, and a link between continuity and change. (Islam and Modern Age, 2002: 95-96).

All societies, primitive, developing and industrialization's have some form of marriage among men and women. Marriage is the approved setting for bearing children. Children born to the couple are expected to be raised within the family setting. The family bond entails mutual expectations of rights and obligations that are prescribed by religion, enforced by law, and observed by the group members. Accordingly, the family members share certain mutual commitments. Thus provides affection for the young and security for the aged, and maximization of effort to ensure the family continuity in peace (Abd al' Ati, 1981: 113-114).

Definitions of Family

Family has been defined into various ways. For the clarity of its concept, let us first consider the following definitions:

- **G.P. Murdock-** "A family is a social group characterized by common residence, economics co-operation and reproduction. It includes adults of both sexes at least two of whom maintain a socially approved sexual relationship and one or more children own or adopted of the sexually co-habiting adults."
- **Burgess and Locke-** "A family is a group of persons united by the ties of marriage, blood or adoption constituting a single household, interacting and intercommunicating with each other in their respective social role of husband and wife, mother and father, son and daughter, brother and sister, creating and maintaining a common culture."
- **MacIver and Page-** "The family is group defined by sex relation sufficiently precise and enduring to provide for the procreation and upbringing of children."

- **Ogburn and Nimkoff-** “Family is more or less a durable association of husband and wife with or without children or of a man or woman alone.”
- **Kingsley Davis-** “Family as a group of persons whose relations to one another are based upon consanguinity and who are therefore kin to one another.”
- **Talcott Parsons-** “Families are factories which produce human personalities.”

Characteristics of Family:

- **Universality:** There is no human society in which some form of the family does not appear. Malinowski writes the typical family, a group consisting of mother, father and their progeny is found in all communities savage, barbarian and civilized.
- **Emotional Basis:** The family is grounded in emotions and sentiments. It is based on our impulse of mating, procreation, maternal devotion, fraternal love and parental care. It is built upon sentiments of love, affection, sympathy cooperation and friendship.
- **Limited Size:** The family is smaller in size. As a primary group its size is necessarily limited. It is a smallest social unit.
- **Formative Influence:** The family creates an environment which surrounds trains and educates the child. It shapes the personality and moulds the character of its members. It emotionally conditions the child.
- **Nuclear Position in the Social Structure:** The family is the nucleus of all other social organizations. The whole social structure is built of family units.
- **Responsibility of the Members:** The members of the family have contained responsibilities, duties and obligations. MacIver points out that in times of crises men may work and fight and die for their country but they toil for their families all their lives.
- **Social Regulation:** The family is guarded both by social taboos and by legal regulations. The society takes precaution to safeguard this organization from any possible breakdown.
- **Its permanent and temporary nature:** The family institution is enduring and universal. But an individual family lasts till the husband and wife are together.

After their demise or divorce, new families of their sons and daughters perpetuate the family name and tradition and the cycle goes on.

Apart from the above mentioned distinctive characteristics, there are certain general characteristics of the family which are mentioned below:

- **Mating relationship:** Family is primarily based on mating relationship. A family is born when a man and woman get married according to the prescribed social norms. Marriage allows husband and wife to enter into socially approved sexual union to satisfy their sex-instinct. Satisfaction of this basic instinct is imperative for a healthy living.
- **Common habitation:** Family members usually share a common residence in which husband, wife, their children and other relatives live together. A common habitation of home or house hold.
- **Reckoning of Descent:** Family is basically a bilateral grouping made up of husband, wife and relatives on both sides. But the children inherit either father's name and property or mother's name and property, depending on the local tradition.
- System of nomenclature and economic system or group having duties and obligations.
- It contains form of marriage according to which the mating relation is established and maintained.

Importance of Family

Family plays a vital role in the formation of a human society by binding men, women and their children in a stable relationship with each other. It is called the nursery of human nature because the manner in which the children are brought up in a family decides to a great extent, the way they react to different situations. In other words, a family unit is the unit which builds up a person's personality. How one behaves and what one become in life is very much dependent on family life. Psychologists believe that a child learns the most from his or her family life. The way family members deal with children has a lifelong effect on his/her personality. Keeping in view all these facts the importance of family cannot be denied. Family unit happens to be the most important part of child life till grow up. The children are usually closer to their parents and their siblings as compared to any other person

in the world. As the children grow up they find good friends, spouses, their own kids and colleagues to share their lives with. Although time brings this change but the importance of family remains there. The children who have a sound family background and who belong to a family with strong family ties are almost always happier. Thus one cannot deny the importance of family life.

Family life is also important in the sense that it gives basic strength as a person. The people who have a smooth and well settled family life are generally less scared of life. Those who are a part of a broken family are generally less confident. These people always expect the worst in life. This is a general state of mind which results in building up of a negative personality. Family life is also important to people as it is the part of our life which has more effect on us compared to any other part of our life. The way a mother treats her kids is actually the deciding factor of what those kids will be like as human being when they grow up (http://www.grandmascraftguides.com/Family_Corner/).

Functions of the Family:

Family performs a number of functions in society. An individual and society at large are highly dependent upon the family for the fulfillment of their basic requirements. If these needs of the individual and society are not met properly, the very survival of both would be at risk. Therefore the functions carried out by the family acquire immense significance.

Various opinions have been expressed regarding the functions of family.

Ogburn and Nimkoff have mentioned six major functions of family:

- Affectional
- Economic
- Recreational
- Protective
- Religious
- Educational

Reed has described four functions:

- Race perpetuation
- Socialization
- Regulation and satisfaction of sex needs
- Economic function

MacIver classifies the functions of family into two types; essential and non-essential functions.

Essential functions include;

- The stable satisfaction of sex need
- Production and rearing of children and,
- Provision of a home

Under the Non-essential functions he includes;

- Religious
- Educational
- Economic
- Health and recreation and other functions.

Kingsley Davis speaks of four main functions of the family:

- Reproduction
- Maintenance
- Placement and;
- Socialization

Let us discuss some important functions of the family which are as follows:

Economic function;

In the pre-industrial society, the family was the unit of production and consumption. Today as individuals pursue independent economic activities outside the home, the family may no longer be a significant unit of production. But the family is still responsible for maintenance of the human young, education, training and material support. In India, the family's support for children does not end when they turn eighteen; in the absence of productive employment many adults continue to depend on their parents. Family fulfills the economic needs of its members to a certain extent by providing them food, clothing and shelter till they become self-reliant. The head of the family takes up a job, business or occupation and meets the requirement of members out of his earnings. Sometimes, the family members collectively pursue a family occupation such as family business, cultivation, cattle rearing, cottage industry etc. This collective effort provides employment as well as income to all members of the family. The other economic function is that the family provides successors, of the assets and liabilities of family, in the form of family.

Recreational function;

At one time, recreation was largely family based. It fostered a close solidarity. Reading aloud, visiting relatives, family reunions, church socials, singing, dancing, playing indoor games etc, brought together the entire family. Elders would organize social gathering among themselves in each other's homes.

Religious function;

The family is a centre for the religious training of the children. The children learn from their parents various religious virtues. The family meets the spiritual needs of its members. It is through the family that the religious inheritance is passed on to the next generation.

Educational function;

The family provides the basis for the child's formal learning. In spite of great changes, the family still gives the child his basic training in the social attitudes and habits important to adult's participation in social life.

Protective function;

Some members in the family such as the children, invalid and old, are absolutely dependent on the family. It has to look after them.

Sexual regulation;

No society can allow unrestricted promiscuity. First, every society has to ensure that statuses and roles are defined so that individuals can function effectively in assigned social groups; society is establishing networks of relationships and forging useful alliances.

Regulation and satisfaction of sex need;

Sex drive is powerful in human beings. Man is susceptible to sexual stimulation throughout his life. Family regulates the sexual behavior of man by its agent, the marriage thus it provides satisfaction of the sex need for man. Marriage is the means to regulate sex relations; however, there are societies, which permit pre-marital and extra-marital relations.

Social placement;

Every individual is recognized as the member of a family and thus has an inherited status. Children inherit not only the family name and material assets but also a social standing. In fact, birth into a family determines a person's caste, class, religion, language, and clan.

Emotional security;

This is one of the most important functions of the family. Food and shelter can be provided by other institutions such as the orphanage. Studies have shown that children who grow up in loving families tend to become mentally and physically healthier than those brought up in institutions.

Provision of a home;

Family provides home for its members. The desire for home is strongly felt by men and women. Children are born and brought up in homes only. Even the parents who work outside are dependent on home for comfort, protection and peace.

Procreation;

Every society needs to replace its members. Although reproduction can take place outside the marital union, it is only the family that can effectively nurture and socializes the human young to meet the needs of society. For its existence, society needs uninterrupted inflow of new individuals. The family fulfills this need by regulating sex relationship between particular members in the family. By this is satisfied not only individuals biological need of sex but is also ensured the procreation of children which is necessary for the continuance of society and the human race.

Socialization;

Socialization of human personality is another important function of family. It is the one of the most important function of the family to look after children and bring them up according to the culture of the society. Family ensures that in the process of socialization i.e. social learning, the child becomes aware of the material as well as non- material aspects of the culture. The child learns language, customs, etiquette, norms and values beliefs and social roles. Without socialization there would be no transfer of culture. Hence the very survival of culture is dependent on the socializing function of the family. For the proper socialization of children, the conduct of the socializing agent, i.e. mother, father and other relatives must be proper and affectionate. Only then does the child learn the norms of society willingly and completely (<http://nos.org/331courseE/L-13%20FAMILY.pdf>).

Types of Family

Family is of many types. There are various factors, which are taken into account while classifying the family.

Based upon some important factors, families can be classified as follows:

Size: Based on size and structure family are of three types:

1. Nuclear Family
2. Joint Family
3. Extended Family

Nuclear Family: A nuclear family consists of a mother, father, and their biological or adoptive descendants, often called the traditional family. This type of family is small in size. In urban areas, nuclear family is more popular. The size of the family is kept small because of lack of living space, economic problems, a feeling of individualism and other factors. The nuclear family can be a nurturing environment in which to raise children as long as there is love, time spent with children, emotional support, low stress, and a stable economic environment. It is the basic grouping of married couple and their children and is also known as immediate, primary or conjugal family.

Joint Family: It is composed of blood and marital relatives of three or more generations who identify themselves as members of a particular family. The members of the joint family provide financial and other kinds of help to each other and follow joint family norms. They usually live under one roof and function under one common authority. Traditionally, joint families live in a large single home, but in modern times accommodations are often in individual, nuclear homes within a shared compound. The joint family includes the father and mother, sons, grandsons and great-grandsons with their spouses, as well as the daughters, granddaughters and great granddaughters until they are married- thus often comprising several married couples and their children. The head of the joint family, called kutumba mukhya, is the father, supported by the mother, and in his absence, the elder son, guided by his mother and supported by his spouse. From an early age, the eldest son is given special training by his father to assume this future responsibility as head of the family. In the event of the father's death, sacred law does allow for the splitting of the family wealth between the sons.

Extended Family: An extended family is two or more adults from different generations of a family, who share a household. It consists of more than parents and children; it may be a family that includes parents, children, cousins, aunts, uncles, grandparents, foster children etc. The extended family may live together for many reasons, help raise children, support for

an ill relative, or help with financial problems. Sometimes children are raised by their grandparents when their biological parents have died or no longer can take care of them. Many grandparents take some primary responsibility for child care, particularly when both parents work. Extended families can be found all over the world in different communities and countries. The number of these families has increased by 40 percent in the past ten years.

Residence: Depending on the place of residence of newly wedded husband and wife, the families are of following three types:

Patrilocal Family

Matrilocal Family

Neolocal Family

- **Patrilocal Family:** Patrilocal residence is structured by a rule that a man remains in his father's house after reaching maturity and brings his wife to live with his family after marriage. Daughters, conversely, move out of their natal household when they marry. Most of the Indian families are of this type.
- **Matrilocal Family:** When the married couple resides in the wife's parental residence then such families is known as matrilocal families. Such families are formed when the wife doesn't leave her mother's house even after marriage and it is the husband who comes to reside with her, leaving his parent's residence.
- **Neolocal Family:** The custom of a newly married couple setting up a new residence independent of the households of either partner's parents. 'Neolocal residence' is the residence in which a married couple establishes a new residence independent of both their relatives. 'Neolocal residence' is now common in North America and other industrialized nations in which the importance of kinship is minimized.

Authority: Families are of two types seen from the point of view of authority. These are:

Patriarchal Family and Matriarchal Family

- **Patriarchal Family:** The family in which father is the formal head and the ruling power in the family is called patriarchal family. The authority of the father is taken as absolute and final in such families. Women and children have to follow the decisions and dictates of the male members of the family. Traditional Indian and

Chinese families are examples of patriarchal families. Most patriarchal families are patrilocal and patrilineal.

- **Matriarchal Family:** The family in which the mother is the central figure and her authority is supreme, is called matriarchal family. In such families usually the mother wields power and authority in the house. Matriarchal families are found among Nayers of Kerala, Khasi and Garo tribes of Assam. Most matriarchal families are matrilineal and matrilocal.

On the basis of the **nature of the relations** among the family members the family can be classified into two main types:

- **The Conjugal Family**, which consists of adult members among whom there exists sex relationship.
- **Consanguine Family**, which consists of members among whom there exists blood relationship, brother and sister, father and son.

Based on Marriage:

- Monogamous Family
- Polygamous Family
- Polyandrous Family

Based on rules of marriage:

- Endogamous
- Exogamous

(<http://nos.org/331courseE/L-13%20FAMILY.pdf>).

2.2. Family in Islam

In every society culture defines the rules which pattern the relations between various units of house-husband and wife, parents and children. As far as Islam is concerned, it has its own culture based upon the Qur'an and the Sunnah. It not only prescribes beliefs, guides man in his worship to his Creator, but also gives the rules of social behavior. The law of Islam regulates life in such a way that the welfare of the whole society may be achieved. But for the attainment of human welfare and cultural advancement, efforts should be made from the basic unit of the society, which is no less than a family. Islam has a pervasive social character and the family is the core of its society. Family is the first cradle of human society.

It is here that the primary character-traits of man are set. Keeping in view this important feature of family, it can be said that it is not only the cradle of man but also cradle of civilization. For this very reason, Islam has given detailed injunctions for leading a healthy family life (Ali, Majid, Islam and Modern Age 1979: 73).

Islam tends to consider the family as something absolutely good and almost sacred. Besides providing tranquility and mutual support and understanding between husband and wife, the obvious function of a family is to provide a culturally and legally acceptable way of satisfying the sexual instinct as well as to raise children as the new generation. Islam has more essential roles for the family, however. It is within the family system that Muslims acquire their religious training, develop their moral character, establish close social relationships and sustain loyalty to the family and to society at large. The support system in the family (financial, social and emotional) is paramount in establishing the peace of mind and security needed for the journey of life. This is particularly important for the socially dependent members, namely the children, the single adults (especially females), as well as the sick or handicapped.

The foundation of the family in Islam is blood ties and/or marital commitments. Adoption, mutual alliance, clientage, private consent to sexual intimacy, and “common law” Or “trial” marriages do not institute a family in the Islamic sense. Islam builds the family on solid grounds that are capable of providing reasonable continuity, true security, and mature intimacy. The foundations of the family have to be as firm and natural as to nurture sincere reciprocity and moral gratification. Islam recognizes that there is no more natural relationship than that of blood, and no more wholesome pattern of sexual intimacy than one in which morality and gratification are joined.

Islam recognizes the religious virtue, the social necessity, and the moral advantage of marriage. The normal course of behavior for the Muslim individual is to be family oriented and to seek a family of his own. Marriage and the family are central in the Islamic system. There are many passages in the Qur'an and statements by the Prophet which go as far as to say that when a Muslim marries, he has thereby perfected half his religion; so let him be God-minded and careful with the other half (Abd al' Ati, 1981: 113-114).

The family in Islam is not fully of the nuclear type. The Muslim family may be extended, polygynous, both extended and polygynous, or neither. There is no specific

provision in Islam that it must be of one type or the other, just as there is none in favour of the nuclear family type. The organizational form is an open question unlike the mutual expectations of the membership. Such expectations may remain, no matter what form the family may assume. So the family in Islam includes both the nuclear (husband, wife and their children) and extended varieties by caring for all the relatives (ahl). There are special laws governing family relations.

The Family Positions

The social positions which constitute the Muslim family include the spouse, the immediate ascendants and/or descendants. As far as the mutual expectations of the occupants of these positions are concerned, there is general agreement among the interpreters of the Islamic law. These positions may be designated as “primary,” that is the immediate constituents of the family system. These positions are not necessarily always interdependent or mutually complementary; some of them may exist independently of the others. However, there may be other positions whose occupants constitute additional categories, such as agnate, the cognate or enate, and the collateral. These positions may be designated as “supplementary.” Both primary and supplementary positions make up the complete Muslim family system. The basic difference between these primary and supplementary categories is that the mutual expectations of the former are unequivocal unlike of the latter where the difference of the opinion is sometimes considerable. Members of the both categories share certain mutual expectations. The rights and obligations shared by the family members pertain to lineal identity and maintenance, succession and affection, socialization of the young and security for the aged, and maximization of effort to ensure the family continuity and welfare (Abd al’ Ati , 1997: 20-23).

The Principle of Identity: Every individual whose lineal identity is known must be identified accordingly. He must preserve his rightful identity and no one may deny it to him. Although he has a natural right to lineage and social placement, it is also his obligation to identify himself with his true lineage, and it is the responsibility of all those about him to help to that effect. According to Qur’an, this is the most equitable in the sight of God. If his lineage is unknown, the individual must be identified as the brother and client of his fellow Muslims. That suffices to give him the necessary identity and to assure him of a legitimate place in society.

The Traditional Form of the Muslim Family: Islam does not prescribe any specific organizational family type; there can be little doubt that traditional Muslim family structure has actually in practice been closer to the extended than to the nuclear type. It so happened that the family organization in Muslim society assumed extended form, there is no provision to give it a universal sanction or disapproval. It apparently saw no particular need to restrict the family structure to any exclusive form, be it extended, nuclear or polygamous. This may indicate that such forms in themselves are not crucial to the Islamic conception of family solidarity and societal cohesion, both of which are primary concern for Islam, and the emphasis should be placed not on the form but rather on the behavioral components. As a matter of fact, familial rights and obligations in Islam are independent of, and differentiated from the organizational forms of the family; the former are fixed while the latter are open. Islam seems to have considered the extended form acceptable though not necessary (Ajijola, 1999: 18-19).

The extended form: The family structure in Islam cannot, properly speaking, be characterized as polygynous. The situation here is very much like that of extended and nuclear family types. The polygynous form is neither absolutely necessary nor unequivocally forbidden; it is permissible. A great deal depends on the individual's discretion and conscience as well as on the social conditions of any given situation. Nothing in Islam indicates that polygyny is or is not a universal rule; or that it must be upheld or abandoned categorically. But once polygyny occurs, certain mutual expectations must be met.

The Structure of a Muslim Family: structure of the family firstly consists, the closest, the husband, the wife, their children, their parents who live with them. The next group consists a number of close relatives, whether they live together or not, who have special claims upon each other, with whom marriage is forbidden and between whom there is no hijab (veil). There are the people who also have prior claim on the wealth of a person, known as in matter of inheritance 'sharers,' the first line of inheritors. They are regarded as mahram, those with whom marriage is prohibited. This constitutes the real core of the family, sharing each other's joys, sorrows, hopes and fears.

Relations Based on Consanguinity: It include

- Father, mother, grandfather, grandmother and other direct ascendants.

- Direct descendants that is sons, daughters, grandsons, granddaughters etc.
- Relations of the second degree(such as brothers, sisters and their descendants)
- Father's mother's sister (not their daughter or other descendants).

Relations Based on Affinity Include:

- Mother-in-law, father-in-law, grandmother-in-law, grandfather-in-law
- Wife's daughters, husband's sons or their grand or great granddaughters or sons respectively
- Son's wife, daughter's husband and
- Step-mother, step-father

This is the real extended family and the nucleus of relationships.

2.3. Institution of Marriage:

Marriage is one of the universal social institutions. It is established by the human society to control and regulate the sex life of man. It is closely connected with the institution of family. Marriage and family, the two social institutions with biological foundations, are complementary to each other. Both have a long standing history of their own. They are permanent element of our social system. Marriage is a governmentally, socially or religiously recognized interpersonal relationship, usually intimate and sexual, that is often created as a form of contract. The most frequently occurring form of marriage is between a woman and a man, where the feminine term wife and the masculine husband are generally used to describe the parties to the contract. Marriage is an institution which admits men and women to family life. It is stable relationship in which man and woman are socially permitted to have children, the right to have children implying the rights to sexual relations (Rao, 2004: 334).

Nature has so arranged that man and woman are attracted towards each other. This natural attraction binds them together and leads them to live a common life and form a family. This natural tendency or the instinct of sex, like any other instinct, should be guided to the right direction so that it may be utilized in the service of humanly. Though common life of husband and wife originates from sex instinct, yet gradually it develops into a sort of deep spiritual and sentimental and social and economic relationship. That is what we call

conjugal union or matrimony. In the wake of keen desire to establish conjugal relations between themselves, man and woman enter into a contract known as marriage or matrimonial contract. This contract has great importance in human life, for it unites the existence of two persons in many ways. It lays the foundation of the life of a human infant and deeply influences his body, life, thought and future actions. That is why a marriage contract is regarded as sacred by various nations and enough attention has been paid in different legal systems to the question connected with it. (Ayatullah, 1988: 369-370).

Marriage is defined as sexual access between males and females, regulated and legitimized by society. The marriage ceremony is an important cultural institution in every society that signifies the union between a man and a woman and grants them socially approved status as husband and wife. Every society has norms about who has sexual relationship between persons believed to be closely related, is a universal cultural standard. In some societies, marriage between cross cousins is preferred but the union between parallel cousins is strictly prohibited. Marriage within the clan is usually considered incest among several communities in India (Abraham, 2006: 157).

According to Oxford dictionary of sociology, "marriage is traditionally conceived to be a legally recognized relationship between an adult male and female that carries certain rights and obligations". However in contemporary societies, marriage is some times interpreted more liberally and the phrase 'living as married' indicates that for many purpose it makes no sense to exclude cohabitations. Currently, the legal concept of marriage is expanding to include same-sex marriage in some areas. Although cohabitations is increasingly accepted, and is now the normal prelude to marriage, people continue to make a distinction between living together and a 'proper' wedding and marriage (Trueman, 2005: 31).

Definitions of Marriage

There is no definition which adequately covers all types of human marriage. The dictionary defines marriage as "The legal union of a man and woman as husband and wife." In the modern world, however, this definition of marriage is simplistic at best. The definition of marriage differs from one person to another and from one time to another. In ancient times, for example, a marriage meant a condition in which a woman was given to a man

almost as property, and often as part of a political, social, or business arrangement of some sort. For much of human history, marriage has been defined as a permanent institution that, once entered into, cannot be dissolved except by the death of one of the spouses. In the modern world, however, marriage is a vastly different thing. On the up side, marriage is today more of a gathering of equals, rather than the subjugation of one to the other. On the down side, marriage often becomes much more temporary than it has been in years past. It has given a number of definitions and explanations among which the following may be noted (<http://www.thelaboroflove.com/articles/what-is-the-definition-of-marriage/>).

- **Edward Westermarck** in his “History of Human Marriage” defines marriage as “the more or less durable connection between male and female lasting beyond the mere act of propagation till after the birth of offspring”.
- **Malinowski** says that marriage is a “contract for the production and maintenance of children”.
- According to **Robert H. Lowie**, “Marriage is a relatively permanent bond between permissible mates”.
- According to **Horton and Hunt**, “Marriage is the approved social pattern whereby two or more persons establish a family”.
- According to **Anderson and Parker**, “Marriage is the sanctioning by a society of a durable bond between one or more males and one or more females established to permit sexual intercourse for the implied purpose of parenthood”.

Characteristics of Marriage:

- **Universality:** Marriage is more or less a universal institution. It is found among the pre-literate as well as literate peoples. It is enforced as a social rule in some of the societies.
- **Relationship between man and woman:** Marriage is a union of man and woman. It indicates relationship between one or more men to one or more women. Who should marry whom? Are the questions which represent social rules regarding marriage which differs significantly.

- **Marriage bond is enduring:** Marriage indicates a long lasting bond between the husband and wife. Hence it is not coextensive with sex life. Marital relationship between man and woman lasts even after that sexual satisfaction is obtained. The Hindus believe that marriage is a sacred bond between the husband and wife which even the death can not break.
- **Marriage requires social approval:** A union of man and woman becomes a marital bond only when the society gives its approval. When marriage is given the hallmark of social approval, it becomes a legal contract.
- **Marriage is associated with some civil or religious ceremony:** Marriage gets its social recognition through some ceremony. This ceremony may have its own rites, rituals, customs formalities, etc. It means marriage has to be concluded in a public and solemn manner.
- **Marriage creates mutual obligations:** Marriage imposes certain rights and duties on both the husband and wife. Both are required to support each other and their children.

Functions and Importance of Marriage

The importance of marriage consists in the functions that it performs. The main functions of marriage are as follows:

- **Regulation of sex life:** Marriage is the powerful instrument of regulating the sex life of man. Sexual impulse is powerful in man. He is exposed to its influence throughout his life. It is an urgent and irresistible need of man. It has to be controlled and regulated in a proper manner to avoid chaos and confusion in society. Hence marriage is often called the license for sex life.

It prohibits sex relations between the closest relatives, i.e., between father and daughter, mother and son, brother and sister, etc. Such a kind of prohibition is called “incest taboo”. Marriage also puts restrictions on the premarital and extra-marital sex relations.

- **Marriage leads to the establishment of the family:** Sexual satisfaction offered by marriage results in self-perpetuation. It means marriage insists on the couple to establish a family of procreation. It is here the children are born and bred up.
- **Provides for economic cooperation:** Marriage makes division of labor possible on the basis of sex. Partners of marriage distribute and divide work among themselves and perform them.
- **Marriage contributes to emotional and intellectual inter stimulation of the partners:** Marriage brings life-partners together and helps them to develop intense love and affection towards each other. It deepens the emotions and strengthens the companionship between the two. It also helps them to develop intellectual cooperation between them.
- **Marriage aims at social solidarity:** Marriage not only brings two individuals of the opposite sex together but also their respective families, group and kindred. Friendship between groups is reinforced through marriage. It is often suggested that by encouraging marriage between different groups, casts, races, classes, religious, linguistic and other communities, it is possible to minimize the social distance between groups and strengthen their solidarity (Rao, 2004: 328).

Forms of Marriage

- **Polygyny:** polygyny is a form of marriage in which one man marries more than one woman at a given time. Polygyny is more popular than polyandry but not as universal as monogamy. It was in practice in most of the ancient civilizations. At present, it is widespread among primitive tribes but it is often simply confined to wealthier classes. Polygyny tends to be accepted in cultures where the head of a large household has more prestige, and may even the distribution of work throughout a family. For moral reason some say it gives more respect and honor to women and discourages the dishonesty of having a mistress or frequenting prostitutes. It is permitted in Muslim community.

Polygyny is of two types:

- **Sororal Polygyny:** It is a type of marriage in which the wives are invariably the sisters. It is often called 'sororate'. The Latin word 'Soror' stands for sister. It is usually observed among the tribes which pay a high bride price. The death of the wife or her childlessness is compensated by supplying a new spouse who is generally the younger sister of the deceased woman.
- **Non-Sororal Polygyny:** As the term indicates, is a type of marriage in which the wives are not related as sisters. For social, economic political and other reasons, both the types are practiced by some people.
- **Polyandry:** Polyandry in general is described as a woman with multiple husbands at the same time. Different types of polyandry are also described; fraternal polyandry that involves marriage to multiple brothers, and non-fraternal polyandry where the husbands are not related. This practice has been rare throughout history and today generally occurs in harsh climates of India and Asia where there is economic hardship and too few women. Areas that abandon girls at birth are thought to compensate later for the shortage of women with polyandry, but this marriage is not widely practiced today.
- **Monogamy:** Monogamy is the form of marriage in which one man marries one woman. This is the most widespread form of marriage found among the primitives as well as civilized people. If it was very popular during the early times, it has almost become universal practice at present. It produces the highest types of affection and sincere devotion. The children are well looked after. Both father and mother give earnest attention to the upbringing of their off springs. Westermarck is of the opinion that monogamy is as old as humanity.
- **Group Marriage:** Theoretically group marriage means the marriage of two or more women with two or more men. But this arrangement is practically rare. Here the husbands are common husbands and wives are common wives. Children are regarded as the children of the entire group as a whole. Children call men of such a group their fathers and all the women their mothers.

- **Endogamy:** Endogamy is a rule of marriage in which the life-partners are to be selected within the group. It is marriage within the group, and the group may be cast, class, tribe, race, village, religious group, etc. So there are cast endogamy, class endogamy, sub caste endogamy, race endogamy, tribal endogamy and such other forms. For example, in caste endogamy, marriage has to take place within the caste. Brahmin has to marry a Brahmin. In sub caste endogamy, it is limited to the sub caste groups. Endogamy prohibits marriage outside the group. Even today inter-caste marriages are not encouraged.
- **Exogamy:** Exogamy is almost the opposite of endogamy. Exogamy is a rule of marriage in which an individual has to marry outside his own group. It prohibits marrying within the group. The rule of exogamy insists that the so called blood relatives shall neither have marital connections nor sexual contacts among themselves. For example, marriage of cousins is allowed among Muslims.
- **Hypergyny:** Hypergyny is when a woman is married into a family of higher social status or rank. It tends to be more common or even expected in societies with dowry rituals where the woman's family pays the groom's family. It is often paired with a society's preference for sons.
- **Hypogyny:** Hypogyny is when a woman is married to a husband of lower social status, rank or age (<http://molly.kalafut.org/marriage/marriage-types.html>).

2.4. Marriage in Islam

It is note worthy that the nature of marital bond is basically the same everywhere. It authorizes two or more persons of opposite sex to engage in sexual relationships. It can be said that family and marriage originate from the complementary biological and social drives of man, and without family there could be no preservation of the species and culture. Without sexual relationships there could be no family. All religions of the world, in one way or another, advocate marriage. Islam is no exception. In the normal course of behavior, a Muslim is expected to establish a conjugal family of procreation. The Holy Qur'an clearly indicates that marriage is a religious duty and a moral safeguard as well as a social necessity.

It must however be fulfilled only by those who are capable of meeting responsibilities involved in marriage (Qur'an, XXIV 32,33) (Yasmeen and Shadbano: A Sociological Study of Marriage and Divorce in Islamic Law, Islam and Modern Age; Vol -20: Nov-1989: 341).

Every society lays down rules for marriage and prescribes the limits within which marriage can take place. Marriage in the pre-Islamic era was governed differently. Before Islam a woman was not a free agent in contacting marriage. It was the right of her father, brother, cousin or any other male guardian to give her in marriage, whether she was old or young, widow or virgin to whomsoever he chose. Her consent was of no moment. There was even a practice prevalent of marrying women by force. This often happened on the death of a man leaving widows. His son or other heir would immediately cast a sheet of cloth on each of the widows (expecting his natural mother), and this was a symbol that he had annexed them to himself. If a widow escaped to her relatives before the sheet was thrown over her, the heirs of the deceased would refuse to pay the dower. This custom is described as the inheriting a deceased man's widows by his heirs, who, in such cases, would divide them among themselves like goods.

There was no restriction as to the number of wives an Arab could take. The only limit was that imposed by his means, opportunity and inclinations. Unrestricted polygamy which was sanctioned by usage was universally prevalent. This was exclusive of the number of slave-girls which a man might possess.

There can be no doubt that an Arab could not marry his mother, grand-mother, sister, daughter or grand-daughter, and perhaps he was not allowed to marry his aunt, and niece. But those among them that followed the magian religion could marry their own daughters and sisters. An Arab was permitted to take as his wife his step-mother, cousin, wife's sisters, and could combine in marriage two sisters or a woman and her niece. It is doubtful whether he could marry his mother-in-law or step-daughter (Rahim, 1994: 8-9).

In Islam, marriage is looked upon as essential for both men and women. It is Sunnah. Islam unlike other religions is a strong advocate of marriage. There is no place for celibacy like for example, the Roman Catholic priests and nuns. The Prophet has said "there is no celibacy in Islam". Marriage is basic to family formation in Islam. It is an institution created for the procreation of society in order that human beings remain chaste and unpolluted. The

primary base of any civilized society is when two people of different sexes unite in a perfectly lawful way. In Islamic marriage a man and a woman enter into a Mithaq-e-Ghalid (a solemn pact) for life. Sexual relation is sanctioned between two individuals of the opposite sex with a view to the procreation of the human species, restraining men from debauchery, encouraging chastity, promoting love, establishing lineage and fixing descent (Shaukat Ali, 1987: 63).

Marriage - A Contract: The most unique characteristic of marriage in Islam is its contractual nature quite contradictory to marriage as a religious sacrament. Since marriage is contractual, the terms and conditions of marriage have to be settled when marriage is arranged, and these can be altered within the legitimate period of the bond. The socio-legal and contractual element, should not obscure the religious aspect, as marriage is also a covenant. This should not be confused with marriage as a sacrament in which case it is a religious binding (Yasmeen and Shadbano: A Sociological Study of Marriage and Divorce in Islamic Law, Islam and Modern Age; Vol -20: Nov-1989: 343).

There is a popular conception that no religious significance is attached to a Muslim marriage and the contract entered into is purely civil in nature. The view that in Islamic law marriage is emphatically not considered to be a sacrament but rests entirely on a contractual basis, is not quite correct. This statement is something so stressed and it is overlooked that it has other important aspects as well.

A Muslim marriage is a religious duty, social as well as a contract which is legalized after Nikah. It is a contract because one party makes an offer of marriage; the other party is at liberty either to accept or not to accept that offer. The consideration is that dower which the husband required to pay his wife, what is necessary among the Sunni orthodox Muslims to conclude a match in the presence of two or one male and two female witnesses and a dower. Social necessity is because through marriage, families are established and the family is the fundamental unit of our society. Islamic law gives the women definitely a high social status after marriage and restrictions are placed upon the unlimited polygamy of pre-Islamic times and a controlled polygamy is allowed. Furthermore, marriage is the only or halal way to indulge in intimacy between a man and women.

While considering the social and legal aspects, the aspect of religion is often neglected or misunderstood, as it is considered more a social rather than religious institution. But the laws of marriage in Islam are regulated by Holy Qur'an. Marriage is recognized in Islam as the basis of the society. It is a contract, but it is also a sacred covenant. Temporary marriage is forbidden. Marriage as an institution leads to the uplift of man and is a means for the continuance of the human race. Spouses are strictly enjoined to honor and love each other. The Prophet was determined to raise the status of woman. He asked people to see their brides before marrying them and taught that nobility of character is the best reason for marrying a woman (Fyzee, 1949: 87-89).

Islam views marriage as a strong bond and a challenging commitment. It is a commitment to life itself, to society and to the dignified and meaningful survival of the human race. It is a commitment that married partners make to one another and to God. It is the kind of commitment in which they find mutual fulfillment and self-realization, love and peace, compassion and serenity, comfort and hope. All this is because marriage in Islam is regarded first and foremost as a religious act, an act of responsible devotion. Sexual control, reproduction as a social necessity, sound health and gratifying state of mind, yet these values and purposes of marriage would take on a special meaning and be reinforced, if they are intertwined with the idea of God and are conceived as religious commitments and internalized as divine blessings.

There are number of verses of the Qur'an stressing these points, values and purposes: "O ye mankind! Be mindful of your Lord who hath created you out of one single man and out of him created his mate and from the twain hath spread abroad so many men and women! And so be mindful of God in whose name you seek a relationship with one another, and respect that relationship, Verily, God is watchful over you." (Q.4:1)

"And one His signs is that He hath created for you mates of your own species that ye may find comfort and rest in their company; and with that end in view hath put between you love and tenderness". (Q.30:21)

It needs to be perfectly understood that marriage in Islam is not a business deal negotiated by two partners, nor it is a secular contract where by material benefits and obligations are evaluated. It is something solemn and sacred and it would be highly

erroneous to define it in simply physical, material or secular terms. Moral chastity, spiritual elevation, social integrity, human stability, peace and mercy constitute the major elements of marriage. It is a contract to which God Himself is the first witness, it is concluded in His Name in obedience to Him and according to His ordinances. It is a decent human relationship authorized and supervised by God. It is a sign of His blessings and abundant mercy as laid down in the Qur'an (30:21). So marriage in Islam is neither a sacrament nor a simple contract. It is something in between. Muslim jurists, therefore regard the institution of marriage as partaking in both the nature of ibadat or devotional acts or dealings among men. It is founded on a contract for which the consent of both the parties is essential (<http://muslim-canada.org/muslimpersonallaw9.html>).

Definition of Marriage: Among the Arabs nikah, 'marriage is a wide term, comprising many different forms of sexual relationship but Muslim law the term marriage is given a definite meaning. Marriage is an institution ordained for the procreation of society and in order that human beings may guard themselves from foulness and unchastity. Ameer Ali cites an ancient text defining its objects as follows: "Marriage is an institution ordained for the procreation of society and in order that human beings may guard themselves from foulness and unchastity. Mahmood J. observes "marriage among Muhammadans is not a sacrament but purely a civil contract and though solemnized generally with recitation of certain verses from the Qur'an, yet the Muhammadan law does not positively prescribe any service peculiar to the occasion. D.F.Mulla says, "Marriage (nikah) is defined to be a contract which has for its objects the procreation and legalization of children". In the words of K .M. Kapadia, in Islam, "marriage is said to be a contract signed by two parties, one for each side (Qureshi, 1995: 57-58).

Importance of Marriage in Islam: Islam has also attached great importance to the question of marriage in its social system. In the Holy Qur'an and the saying of the Holy Prophet and the Imams we find that marriage has been greatly encouraged. The Holy Prophet has been reported to have said: "No institution of Islam is liked by Allah more than that of marriage" (Ayatollah, 1988: 370).

Marriage is the basic principle of human civilization. The Arabic word for marriage is nikah which originally means 'aqd' or 'writing'. Marriage in Islam is a sacred which

every Muslim must enter into. Thus in the Qur'an it is said: "And marry those among you who are single and those who are fit among your male slaves and your female slaves; if they are needy, Allah will make them free from want out of His grace; and Allah is keep chaste until Allah make them free from want of His grace" (24:32,33).

In another verse, marriage-relationship is given the same importance as blood-relationship: "And He it is who has created man from water, then He has made for him blood relationship and marriage relationship" (25:54). Tradition also lays stress upon living in a married state. The Prophet is reported to have said to certain people who talked of fasting in the day-time and keeping awake during the night, praying to God and keeping away from marriage: "I keep a fast and break it and I pray and I sleep, and I am married, so whoever inclined to any other way than Sunnah, he is not of me." (Bu.67:1). Another saying of the Prophet laying stress upon marriage is worded thus: "O assembly of young people! Whoever of you has the means to support a wife (al-ba'ah), he should get married, for this(i.e., marriage) is the means of keeping the looks cast down and guarding the chastity; and he who has not the means, let him keep fast, for this will act as castration" (Bu.67:2). Celibacy (tabattul) was expressly forbidden by the Prophet (Bu.67:8). According to one tradition, "the man who marries perfects half his religion" (MM.13: I-III). Another says: Matrimonial alliances increase friendship more than anything else". The Qur'an repeatedly speaks of the two mates, man and woman, as being created from each other: "O people, keep your duty to your Lord, who created you from a single being and created its mate of the same (kind) and spread from these two many men and women" (4:i) . In another verse: "And Allah has made wives for you from among yourselves (minanfusi-kum), and has given you sons and daughters from your wives" (16: 72); "And of His signs is this, that He created males for you from yourselves (minanfusi-kum), that you may find quiet of mind in them." (30: 21) (Ali, 1973: 495-496).

These verses of the Noble Qur'an clearly show that in contract to other religions like Christianity, Buddhism, Judaism etc which consider celibacy or monasticism as a great virtue and means of salvation, Islam considers marriage as one of the most virtues and approved institutions. The messenger of Allah (PBUH) declared, "There is no monasticism in Islam". He further ordained, "O you young men! Whoever is able to marry should marry, for that will help him to lower his gaze and guard his modesty."(Al-Bukhari) Modesty was

regarded as a great virtue by the Prophet. He said, "Modesty is part of faith." (Al-Bukhari) Since the family is the nucleus of Islamic society, and marriage is the only way to bring families into existence, the Prophet (PBUH) insisted upon his followers entering into marriage. The Shar'ah prescribes rules to regulate the functioning of the family so that both spouses can live together in love, security and tranquility. Marriage in Islam has aspects of both 'ibadah (worship) of Allah and mu'amalah (transactions between human beings (www.islamonline.net).

It is 'ibadah aspect, marriage is an act, pleasing to Allah because it is in accordance with his commandments that husband and wife love each other and help each other to make efforts to continue the human race and rear and nurse their children to become true servants of Allah. The multiplication of the human race is mentioned as one of the objects of marriage. The family which is the real unit of the human race and the first cohesive force which makes civilization possible owes its existence solely to marriage. If there is no marriage, then there can be no family no ties of kinship, no force uniting the different elements of humanity is held together and civilization made possible.

The institution of marriage is also responsible to a very great extent for the development of those feeling of love and service which are the pride of humanity to-day. The mutual love of husband and wife-a love based not on momentary passion but life long connection, and the consequent parental love for offspring leads to a very high development of the feeling of love of man for man as such, and thus to the disinterested service of humanity. This love is described as a sign of God in the Qur'an: "And of His signs is this, that He created mates from you from yourselves that you may find quiet of mind in them, and He put between you love and compassion."(30:21). The family is in fact the first training ground of love and service. Here a man finds real pleasure in the service of humanity, and the sense of service is thus gradually developed and broadened. It is in fact a training ground for every kind of morality, for it is in the home that a man learns to have a sense of his own obligations and responsibilities, to have a respect for others, rights and above all to have a real pleasure in suffering for the sake of others. The Prophet (PBUH) is reported to have said: "The best of you is the who treat his wife best (IM.9:49) (Ali, 1973: 497-498).

The Objectives of Marriage in Islam: The basic objectives of marriage in Islam consist of:

- a. Marriage secures comfortable atmosphere for husband and wife. With regard to the first object the Qur'an says: "One of His signs is that He created for you spouses of your own species, so that you might find comfort with them, and He put mutual love and affection in your hearts. Surely in this their lessons for the thinking people." (Surah al- Rum,30:21). From the Islamic point of view marriage is not merely an instrument for legalizing sexual relations, but it is an agreement which unites the very existence of the husband and wife and gives a new color and a new rhythm to their life. It brings them out of real solitariness, turns them into a couple instead of single individuals and makes them complementary to each other.
- b. Producing a new generation and bringing up healthy, faithful and virtuous children. Production is the natural outcome of marriage. It serves to prolong man's existence. With regard to the second object the Qur'an says: "He is the Creator of the heavens and the earth. He has given you partners from among yourselves, and (similarly made) the cattle (also) males and females. That is how He multiplies you. Nothing can be compared to Him. He is the All-hearing, the All-seeing". (Surah al-Shura, 42:11) (Ayatollah, 1988: 370-371).
- c. Marriage consummates one's faith, spares one looking at other women, enables one to preserve his chastity and offers one a lawful means to satisfy his sexual desire. Adultery is, therefore, no longer an option. That is why the Prophet (PBUH) spoke of marriage saying, "It spares one looking at what one should not, or lapsing in adultery." He (PBUH) also said, "If Allah grants a Muslim a righteous wife, this helps him preserve half of his religion (faith). He should, therefore, fear Allah as regard the other half." (Reported by At-Tabarani and Al-Hakim, and Al-Mundhri states in At-Targhib that is an authentic hadith with a good chain of narrators).
- d. Not only does marriage help a Muslim preserve his faith, it is also the indispensable pillar of worldly happiness which Islam encourages its followers to enjoy so that nothing would distract them from the ultimate goal of uplifting their souls and attaining high degrees of spirituality. Imam Muslim reports that the Prophet (PBUH)

said, "The whole world is pleasure, and the best pleasure of the world is the righteous woman."

- e. Marriage is the sole means of establishing a family, the nucleus of society. No respectable human society could ever exist, if not based on the family. Shaded by the close relations of motherhood, fatherhood as well as parent-child and siblings relations, warm feelings of love, altruism, mercy, care and cooperation are instilled in a Muslim.
- f. Social relations are bolstered with the aid of marriage, whereby scope of family expands including his in-laws and his children's aunts and uncles. That way feeling of amity, love and social closeness extends to include more and more people. Allah meant relations by marriage to be just as strong as kinship relations.
- g. Marriage matures a man's character through the responsibilities he has to shoulder, as a husband and a father, and similarly matures a woman's character through the responsibilities she has to shoulder, as a wife and mother. Many men refrain from marriage simply because they wish to live as grown-up children with no ties to bind them, no house to unite them or responsibilities they are to undertake. Such people are not fit to live; they are good for nothing. Marriage is thus a strong commitment and a shared responsibility between a man and a woman since their first day together. Allah says, "And they (women) have right similar to those (of men) over them in kindness, and men are a degree above them. Allah is mighty, wise." (Al-Baqarah 2:228) "Men are in charge of women, because Allah hath made men the one of them to excel the other, and because they spend of their property (for the support of women). So good women are the obedient, guarding in secret that which Allah hath guarded" (Al-Nisa' 4:34).
- h. Having got married, a man can focus on perfecting his work, reassured that there is someone back home who disposes of his affairs, preserves his money and takes care of his children. He can thus do his job properly. This stands in sharp contrast to another whose mind is preoccupied and who is torn apart between his work and home, his job and the burden of securing his food and clothes back home (www.islamonline.net).

Capacity for Marriage:

Every Muslim can enter into a marriage contract if he or she is of sound mind and has attained puberty, provided there is no other legal disability. Mulla says that under the Muslim law every Muslim of sound mind, who has attained puberty, may enter into a contract of marriage. Lunatic and minors who have not attained puberty may be validly contracted in marriage by their respective guardians (Qureshi, 1995: 61).

In capacity to enter into a valid marriage contract is restricted to interdiction such as minority, imbecility, prodigality, debt, or death-illness. In Muslim law, two basic attributes of legal competence (capacity) are required to contract a valid marriage. First both parties should be mature enough to be able to comprehend the nature of the act of marriage and if either of them is insane or is unable to grasp the nature of the act, it is null and void. There is no dissent in any school of jurisprudence regarding this issue. Secondly both parties must be adult in order to understand the nature of the contract. This condition according to most jurists is fulfilled on the attainment of puberty (Shaukat Ali, 1987: 68).

According to the Hanafī School, every person who is a minor, whether male or female, maiden or *thayyiba* i.e. (a girl or boy) who has had sexual intercourse is competent to contract marriage and cannot be given in marriage without his or her consent by the father or any other relative. The Shafi's deny this right to marry on her own to a maiden, even if she has attained full age, but this view is not acceptable to the Hanafis as it would amount to a breach of the cardinal principle of Muhammadan Law that the legal status of a grown-up female is as complete as that of a male (<http://muslim-canada.org/muspersonallaw9.html>).

If the parties concerned have not attained puberty, or in the terminology of law they are still minors, Islamic jurists permit their guardians to enter them into a valid marriage contract. The law presumes that the guardian being well intentioned can comprehend the nature of this action on behalf of the ward and can thus enter the child into a marriage contract. Further, just as a minor or an infant cannot himself enter into any other contract, so he cannot enter into a marriage contract without the intervention of a guardian. A distinction, however, is drawn between a minor and an infant. The same conditions are

necessary in the case of a girl as in the case of a boy; she also in order to contract a valid marriage must be major and sane”. And the Fatwa-i-Alamgiri states that it is valid for a sarir to contract a marriage “though dependent for its operation on the consent of the guardian”. A sarir is described as “youth who has not attained majority but is possessed of understanding”. The Fatwa-i-Alamgiri calls such a minor Sahebul-Aql (Shaukat Ali, 1987: 68).

There is a difference of opinion among the Hanafis as to the circumstances under which a marriage contracted by the father can be said aside. The accepted view seems to be that if the father was not a man of proper judgment and was of reckless character, and married his minor daughter to a man of immoral habits, it is liable to be set aside. Abu Yusuf and Muhammad go further than that because an evidently unequal or undesirable marriage or marriage for less than proper dower of a minor female, or an excessive dower for a minor male is not valid, but Abu Hanifa does not share this view (<http://muslim-canada.org/muspersonallaw9.html>).

Tyabji says that under Shiite and Shafii laws the marriage may be annulled by the wife on the following grounds:

- The insanity of the husband, whether or not he has lucid intervals, and whether it comes on before or after the marriage, and whether before or after consummation;
- The fact that the husband was prior to the marriage an eunuch according to the opinion of Ithna Ashari Shiite authorities even if that condition supervenes;
- The husband's impotence and insane person has been made voidable. If a Muslim husband was impotent at the time of marriage and continues to be impotent, the wife is entitled to apply to the court for the dissolution of marriage. Similarly if the husband has been insane for a period of two years or is suffering from leprosy or a virulent venereal disease, she may apply before the court for the dissolution of marriage (Qureshi, 1995: 61).

Marriage Age:

No particular age has been specified for marriage in the Islamic law, in fact with the difference of climatic conditions there would be a difference as to the marriageable age in

different countries. Under the Muslim law, both the boy and girl must be of sound mind. Every Muslim of sound mind who has attained majority can enter into a contract of marriage. Under the Muslim law the majority is attained at puberty. Puberty is established by natural signs and change in the body. In addition to legal capacity such as sanity, physical maturity or the marriageable age, capacity to understand the full responsibilities that would be entails in a marriage is also necessary. It may be recalled that; "In fourteen countries, the newly enacted laws directly or indirectly restrain, to a varying extent, the practice of contracting children or minors into marriage. In most of these countries the normal marriage age is fixed separately, for men and women, by the local laws, but the courts are authorized to make relaxation in exceptional cases for a specified reason. In Egypt, at the time of marriage, men and women should both have completed eighteen and sixteen years respectively. In Pakistan, after the amendment of 1961 Act, "The minimum marriage age in Pakistan, under the Child Marriage Restraint Act, 1929, is eighteen years for men and sixteen years for women. In Jordan, under the Law of Family Right of 1951 and Syria under the Law of Personal Status 1953, the normal age of marriage for men is eighteen years and seventeen years for women. In Iraq under the Law of Personal Status 1959, the marriage age for both is eighteen years. In Iran the minimum age for marriage as laid down in the Iranian Civil Code of 1931 is eighteen years for men and fifteen years for women. In India, under the Child Marriage Restraint Act of 1929, known as the Sharda Act as amended in March 1978, declared that solemnization of the marriage of a man below the age of twenty one years, and the girl below the age of eighteen years is a punishable offence, since such marriages are known as Child Marriage. The Act applies to all Indians including Muslims. The persons responsible for such a marriage including the Qazi and Vakil may be prosecuted (Shaukat Ali : 69-70).

This act was violently resented by orthodox Muslims many of whom regarded as unjustified interference with Muslim Personal law and deliberately got their children married in violation of the Act just to demonstrate their opposition to it. Recent legislation has fixed the age of marriage at roughly the same as the Sharda Act in Muslim countries such as Turkey, Egypt, Syria, Morocco, Iraq and Iran but the Indian Muslim has still not fully accepted the Indian law. That originally the age could not have been so low is borne out by the Qur'an's injunction, "Marry those women whom you like" (Q.4:3). This

presupposes a certain age of discretion being reached as well as the meeting of the bride and groom before the wedding (Brijbhushan, 1983: 44-45).

The age of puberty under Hanafi Law for Muslims male as well as female ranges between 9 and 15 years, the former are being the lowest and the latter being its highest limit. It is a question of evidence in each case whether a particular minor girl has or has not attained puberty. But in the absence of the natural signs, the presumption of law is that it is attained in 15th year of age. It is agreed by all the Hanafiets that no one can be adjudged an adult before twelve years if a male and nine if a female though the party claims to be so or the natural sign appear.

The puberty presumption age under Shia law is fifteen years in males and nine in females. In a case it was held by the Privy Council that puberty age of a girl is nine years.

Under Shia Law all acts which may be performed by a minor before attaining maturity and discretion and without the consent of father or grandfather are considered to be null and void (Hussain, 1989: 161-162).

In India, under the Dissolution of Muslim Marriage Act 1939, all restriction on the option of puberty in the case of a minor girl whose marriage has been arranged by a father or grand father has been abolished and, under section 2 (vii) of the Act, a wife is entitled to the dissolution of marriage if she proves the following facts:

- The marriage has not been consummated
- The marriage took place before she attained the age of fifteen years
- She has repudiated the marriage before attaining the age of eighteen years (Shaukat Ali, 1987: 76).

The Permanence of Marriage:

Islam has prescribed certain measures to make the marital bond as permanent as humanly possible. The parties must strive to meet the conditions of: proper age, general compatibility, reasonable dowry, good-will, free consent, unselfish guardianship, honorable intentions and judicious discretion. In entering into a marital contract, the intention must be clear to make the bond permanent and free from the casual and temporary designations. As

such, trial marriages, term marriages and all marriages that appear experimental, casual or temporary are totally forbidden in Islam.

The Prophet had unequivocally condemned men and women who relish the frequent change of partners that is the tasters who enjoy a partner for a while and then shift to another. In one of the traditions of the Prophet, it is said that a woman is ordinarily sought as a wife for her wealth, for her beauty, for the nobility of her stock, or for her religious qualities, but blessed and fortunate is he who chooses his mate for piety in preference to everything else (<http://muslim-canada.org/muspersonallaw9.html>).

The Doctrine of Equality in Marriage (Kafaa):

It is true that Islam advocate equality. But it is very difficult to treat all persons equally. It has therefore been said that the Prophet is reported to have recommended marriage with fit spouses; 'Marry your equals.' The Hanafi School, therefore, insists that there shall be equality between the two parties. Hanafi law says that a Muslim male while marrying should keep into mind the following things:

- Family
- Islam
- Profession
- Freedom
- Good character, and
- Means

The condition of equality is insisted upon only with respect to the husband and not the wife. According to some authorities, the criterion of equality extends to the wife as a will. If a female marries an unequal husband against the wishes of her guardian, the marriage will be void, but if the guardian had initially agreed and raised an objection later on, the objection loses its validity (Qureshi, 1995: 79).

Is Marriage Obligatory? According to Imams Abu Hanifah, Ahmad ibn Hanbal and Malik ibn Anas, marriage is recommendatory; however in certain individuals it becomes wajib/obligatory. Imam Shaafi'i considers it to be nafl or mubah (preferable). The general

opinion is that if a person, male or female fears that if he/she does not marry they will commit fornication, then marriage becomes "wajib". If a person has strong sexual urges then it becomes "wajib" for that person to marry. Marriage should not be put off or delayed especially if one has the means to do so.

A man, however should not marry if he or she does not possess the means to maintain a wife and future family, or if he has no sex drive or if dislikes children, or if he feels marriage will seriously affect his religious obligation.

The general principle is that prophet (pbuh) enjoined up in the followers to marry. He said "when a man marries, he has fulfilled half of his religion, so let him fear Allah regarding the remaining half." This hadith is narrated by Anas. Islam greatly encourages marriage because it shields one from and upholds the family unit which Islam places great importance (Sharma, 2007: 190-191).

Legal Disabilities

Mut'ah or Temporary Marriage Disabilities: A marriage for a fixed period was recognized before Islam went under the name of mut 'ah, meaning profiting by or enjoying a thing. Besides the temporary marriage, four kinds of union of man and woman were recognized by the pre-Islamic Arabs (Bu:67:37). The first of these was the permanent marriage tie which, in modified form was recognized by Islam. The second was known as the istibdza ', explain by Bukhari and other authorities, "A man would say to his wife, send for such one and have cohabitation with him and the husband would remain aloof from her and would not touch her until her pregnancy was clear". This is exactly the form which goes under the name of niyoga in the reformed Hindu sect, Arya Samaj. The third form was that in which any number of men, less than ten, would gather together and have cohabitation with a woman, and when she became pregnant and gave birth to a child, she would call for all those men and would say that the child belonged to such a one from among them, and he was bound by her word to accept the responsibility. Fourthly, there were prostitutes who were entered upon promiscuously and one of them bore a child, a man known as qa'if (one who recognized) was invited and his decision based on similarity of features, was final as to who was the father of the child. The last three forms only legalized adultery in one form or

another and Islam did not recognize any of them, nor was any such practice resorted to by any Muslim at any time (Ali, 1973: 499-500).

There is agreement that the mut 'ah temporary marriage was practiced before Islam and for some time after the rise of Islam. It was a personal contract between a man and a woman to cohabit for a limited period of time for example, five days, or two months, or half a year or many years, in return for certain remuneration payable by the man. It required no witnesses and did not entail the mutual right of inheritance (Abd al' Ati, 1977: 103).

The beginning and end of the marriage are specified, and he plays her a small mahr (dowry), and after the specified time is over, the woman exits the marriage. Mut' ah marriage is considered to be zinaa (adultery or fornication), even if both parties consent to it, and even if it lasts for a long time, and even if the man pays the woman a mahr. There is nothing that has been reported in Sharee'ah that shows that it may be permitted, apart from the brief period when it was allowed during the year of the conquest of Makkah. That was because at that time there were so many people who have newly embraced Islam and there was the fear that they might become apostates, because they had been used to committing zinaa during the Jaahiliyyah. So this kind of marriage was permitted for them for three days, then it was made haraam until the Day of Resurrection, as was narrated by Muslim, 1406 (www.islamonline.net).

This type of contract, which was never meant to create permanent rights and obligations of marriage, was clearly prohibited by the Holy Qur'an and the Sunnah. However, a particular sect claims that it is still Halaal. A major branch of the Shi 'ia school, contend that it was never prohibited by the Qur'an or the Prophet. But Islam discarded the idea of temporariness in marriage, because it opens the way to loose relations of the sexes and entails no responsibility of any kind on the father for the care and bringing up of the children. It neither creates permanent rights and obligations, nor it brings about a family set-up, nor does it aim at having children and maintain chastity. It is nothing but to satisfy the sexual desire for a short period of time, as a result, the woman with whom mut'ah is done is not given even the status of a wife (Ali, 1973: 500).

There is some confusion in the tradition about the mut'ah marriage. The Ja 'fari Shee'ah scholars claim that mut'ah or temporary marriage is not forbidden because it was

practiced during the Prophet's time. Only Umar forbade it and that all reports tracing this prohibition to the Prophet are of questionable authenticity. It is agreed however that it was during the Caliphate of 'Umar (13-23 A.H) that mut'ah practice was ruthlessly condemned and absolutely forbidden. Some scholars claim that the practice persisted during the Caliphate of Abu Bakr (11-13 A.H) The Shi 'is interpret this as to support their doctrine that the Prophet did not prohibit the mut'ah and it must therefore have been accepted as lawful. Some contemporary writers are inclined to attribute the persistence of the practice however illicit, till 'Umar's Caliphate to the fact that it was fairly common in Arabia before Islam, was overlooked for some time after the rise of Islam, and was justified as being useful in times of war and on travels.

There are the opinions of the four Imams:

- **Hanafi School:** stated in Fathul Qadir that the temporary marriage is void and defined this marriage as a man saying to a woman 'I will enjoy you so many times for a certain sum of money.'
- **Shafi'i School:** temporary marriage is a marriage for a period, so if it was requested of guardian to marry his ward for a month, this would be a void marriage.
- **Maliki School:** temporary marriage is one, as if saying to the guardian allow me to marry your ward for a month for such a fee, if they agree, the marriage would be void and both spouses would be liable to a penalty. This marriage is ended without a divorce, regardless of whether it is before consummation or after.
- **Hanabali School:** Temporary marriage is a marriage for a term whether fixed or not, it raises two issues. One for a fixed term having a guardian and two witnesses, or one called enjoyment not having a guardian or witnesses. In both the cases it is void (www.islamonline.net).

All the Muslim sects agree in holding temporary marriage to be unlawful, with the exception of Akhbari Shi 'ahs, but even according to them it is not a very honorable transaction. Although the Shi 'is endorsed the mut'ah marriage, they differentiated their conception of it from that of pre-Islamic times. They endeavored to make it appear as close

to permanent marriage as possible. These features may clearly imply that they took the problem much more seriously than the pre-Islamic Arabs had (Abd al' Ati, 1977: 108-109).

Prohibited Marriage Relations in Islam: The Qur'an forbids certain marriage relations: "Forbidden to you are your mothers, and your daughters, and your sisters, and your parental aunts, and your maternal aunts, and brother's daughters and sister's daughters, and your mothers that have suckled you, and your foster-sisters, and mothers of your wives, and your step-daughters who are in your guardianship, born of your wives to whom you have gone in –but if you have not gone in to them, there is no blame on you –and the wives of your sons who are of your own loins, and that you should have two sisters together, except what has already passed" (4:23) (Ali, 1973: 503).

A person who cannot enter into marital relations with a person of the opposite sex in deference to the relationship already existing between them is called mahram. Perhaps the idea behind this rule is that family relations at certain level, such as those between brother and sister, father and daughter or son or mother, should be kept absolutely apart from the field of sex.

Mahrams whose inter-marrying is not valid are generally divided into three categories:

- Those having blood relationship are consanguineous mahrams.
- Those having relationship in virtue of nursing which is established on fulfillment of some special conditions and is in fact a sort of acquired blood relationship are foster mahrams.
- Those having relationship in virtue of a marriage are mahrams on the ground of affinity.

Rules regarding the prohibition of marriage on the grounds of consanguinity and affinity exist with certain variations either in the law codes or conventional customs of all nations. Only some communities for certain special reasons, such as maintaining the purity of their blood and preserving their family or racial characteristics, have recommended inter-marrying among close relatives, but nowadays such instances are extremely rare.

Consanguineous Mahrams

Seven categories of persons are debarred from inter-marrying on the ground of blood-relationship. The details are as under:

A man cannot marry his:

Mother (includes grand-mother)

Daughter (includes her descendants)

Sister

Sister's daughter and her descendants

Brother's daughter and her descendants

Paternal aunt (include aunts of father)

Maternal aunt and mother

A woman cannot marry her:

Father (includes grand-father)

Son (includes his descendants)

Brother

Brother's son and his descendants

Sister's son and his descendants

Paternal uncle include uncles of father

Maternal uncle and mother.

Foster-Mahrams

Fosterage under specified conditions induces the same limits of relationship prohibitive of marriage as consanguinity. This prohibition, introduced by jurists, stemmed from not uncommon situation of the woman providing breast milk not only for her own child but for someone else's child as well. The two children are prohibited from inter-marrying, as are the male child with the foster mother. The link arising out of the mother's milk is given a force similar to the blood tie. In Hanafi law, at least, even one drop of milk

will create the bar. The Prophet has also declared, “Everything is prohibited by reason of fosterage which is so by reason of kindred” (Pearl, 1979: 49).

Mahrams on Account of Affinity

Five categories of persons are debarred from inter-marrying on the ground of affinity or relationship created by marriage. These are as under:

A man cannot marry his:

Mother-in-law

Daughter-in-law

Step-mother

Step-daughter

Wife’s sister

A woman cannot marry her:

Father-in-law

Son-in-law

Step-father

Step-son

Sister’s husband

A man is debarred from marrying his wife’s sister only so long as the other sister continues to be his wife. If that relationship terminates as the result of death or divorce, there is no objection to his marrying a sister of his former wife. Hence in this case prohibition is not permanent. That is why wife’s sister is not regarded as mahram for the purpose of looking at her or meeting her (Ayatollah, 1988: 381-382).

Marriage Relation between Muslims and Non-Muslims:

Another ground on which marriage is prohibited in the Qur’an is shirk or polytheism or associating gods with God: “And marry not the idolatresses (al-mushrikat) until they believe, and certainly a believing maid is better than an idolatress even though she pleases

you; nor give (believing women) in marrying to idolaters until they believe, and certainly a believing slave is better than an idolater even though he pleases you” (2:221).

Under the Shia law, a marriage between a Muslim male and a non-Muslim female is unlawful and void. Under the Shia law, a marriage between a Muslim female and a non-Muslim male is void. However, a Shia Muslim male can very well enter in a muta marriage with a Kitabi. The Sunnis on the other hand, seem always to have more or less influenced by the eastern nations. In consequence of the different positions which the followers of the two sects occupied towards non-Muslims, a wide divergence exists between the Shia and Sunni Schools of law regarding inter-marriages between Muslims and non-Muslims.

The Qur'an, forbade all unions between Musalmans and idolaters. It is said “Marry not a woman of the polytheists until she embraces Islam”. But it also declared “such woman as are Muhsians belonging to the scriptural sects, or believing in a revealed or moral religion are lawful to Muslim”. The Sunni Muslim holds that a marriage between a Muslim and a Magian or a Hindu woman is invalid. Under the Muslim law, a Muslim female cannot contract a valid marriage except with a Muslim. She cannot contract the marriage even with a Kitabi. It may however be noted that a marriage by a Muslim female with a non-Muslim (i.e., Christian, Jew Idolater or a fire-worshipper) is merely irregular and not void. A Sunni male may contract a valid marriage with a Shia female and a Shia male may contract a valid marriage with a Sunni female (Qureshi, 1995: 70-71).

Marriage with a Woman who is Undergoing ‘Idda: In Mohammadan law, when a marriage by death or divorce, the woman is prohibited from marrying within a specified time. This period is called ‘iddat. The most approved definition of ‘idda is the term by the completion of which a new marriage is rendered lawful’. It is a period of continence imposed on a woman on the termination of a marriage in the interest of certainty of paternity during which a woman is supposed to live a life of seclusion and to abstain certain luxuries. If consummation of marriage has taken place and the marriage is dissolved by divorce, the duration of ‘idda is three courses, or if the woman is pregnant, till delivery. If the marriage is dissolved by death, the period of ‘idda is four months and ten days or, if the woman is pregnant, till delivery, whichever is longer. If the marriage is not consummated, ‘idda has to be observed in the case of death, but not in the case of divorce (Fyzee, 1949: 107-108).

Unlawful Conjunction: A man is also forbidden to have two wives at the same time, so related to each other by consanguinity, affinity or fosterage that they could not have lawfully intermarried with each other if they had been of different sexes. Thus, a man cannot marry two sisters, or an aunt and her niece. Under Hanafi law, generally speaking, disregard of the bar of unlawful conjunction renders the marriage irregular but not void. The most important case arising under this rule is the marriage of two sisters to one man. There is nothing to prevent a man from marrying his wife's sister after the death or divorce of his wife; but it is unlawful to marry two sisters at the same time, or to marry the sister of the wife during the wife's lifetime. The view of the Calcutta High Court, guided clearly by the Koranic provision "And (it is forbidden unto you) that ye should have two sisters together," (Qur.iv, 23) such unions were void and the issue illegitimate. But the High Court of Bombay, Madras and Lahore, and the Chief Court of Oudh have declared them to be merely irregular and the issue legitimate (Fyzee, 1949: 106-197).

Classification of Marriage: Under the Muslim law a marriage is a contract and therefore, if the required conditions are not observed properly the marriage may be declared void. Muslim law divides the marriage under the following heads:

- Valid-(Sahih)
- Void-(Batil)
- Irregular-(Fasid)

Valid Marriage (Sahih Nikah): A marriage which conforms in all respects to the provisions of Muslim law is termed valid in regard to legal requirements. Under the Muslim law certain prohibitions have been made for a valid marriage. Sometimes these prohibitions are perpetual and sometimes temporary. If any spouse has neglected to follow perpetual prohibition, the marriage will be void. If the spouse has failed to follow relative prohibition (temporary) the marriage may be irregular.

The following consequences will arise out of a valid marriage:

- a. The spouses will acquire the status of husband and wife.
- b. The children of such marriage will acquire the status of legitimacy.

- c. The marriage will give rise to certain rights and obligations against each other as well as against third person.

Void Marriage (Batil Nikah): A marriage which has no legal result is termed batil or void. A void marriage is no marriage. It is a marriage which does not exist from its beginning. It is called a marriage because two persons have undergone the rituals of marriage. But since they lacked absolute capacity to marry, just by undergoing ceremonies, they cannot become husband and wife in the eye of law. The law imposes certain prohibitions based on consanguinity, and affinity. If a man marries a woman in violation of such prohibition the marriage is void and the off spring is illegitimate. There is also Quran, i.e., in injunction against a man having at the same time two wives who are related to each other by consanguinity, affinity or fosterage that if either of them had been a male they could not have lawfully intermarried, as for instance two sisters or aunt and niece. On the question as to whether a marriage performed in violating such an injunction is void or is only irregular, there is difference of opinion among some of the High Courts.

Under the Muslim law, the term batil, when applied by the Hanafis to a secular legal transaction, denotes that no legal result will occur from it. A void marriage is an unlawful connection which produces no mutual rights and obligations between the parties. For example, there is no right of dower, unless there has been consummation. The death of one of them does not entitle the other to inherit from the deceased. Ameer Ali says that a void marriage is no marriage at all in fact as well as in law (Qureshi, 1995: 82-83).

Irregular Marriage (Fasid): A union between a man and a woman may be either lawful or unlawful. Unlawfulness may be either absolute or relative. If the unlawfulness is absolute, we have a void (batil) marriage. If it is relative, we have an irregular (fasid) marriage.

The following marriages have been considered irregular:

- A marriage without witnesses;
- A marriage with a woman undergoing 'idda;
- A marriage prohibited by reason of difference of religion;
- A marriage with two sisters, or contrary to the rules of unlawful conjunction;

- A marriage with a fifth wife.

The Ithna 'Ashari and Fatimid schools of law do not recognize the distinction between void and irregular marriages. A marriage is according to those systems, either valid or void; hence, the above mentioned unions would be treated as void marriages.

Effects of Valid (Sahih) Marriage: Sexual intercourse becomes lawful and the children born of the union are legitimate;

- The wife become entitled to her dower (mahr);
- The wife becomes entitled to maintenance
- The husband is entitled to restrain the wife's movements in a reasonable manner and to exercise marital authority;
- Mutual rights of inheritance are established;
- The wife is not entitled to remarry after the death of her husband, or after the dissolution of her marriage, without observing 'idda;

A woman does not change her status on marriage. She remains subject to her own pre-marital school of law. Neither the husband nor the wife acquires any interest in the property of the other by reason of marriage (Fyzee, 1949: 113-117).

Effect of a Void (Batil) Marriage: A Void marriage is no marriage at all It does not create any civil rights or obligations between the parties. The offspring of a void marriage are illegitimate.

Effect of an Irregular (Fasid) Marriage: An irregular marriage may be terminated by either party, either before or after consummation, by words showing an intention to separate, as where either party says to the other "I have relinquished you ". An irregular marriage has no legal effects before consummation. If there has been consummation the wife is entitled to dower, proper or specified, whichever is less, and she must observe 'idda for three courses. No rights of inheritance are created between the husband and the wife by an irregular marriage. The issue of the marriage is legitimate and one entitled to a share of the inheritance.

Presumption of Marriage: Sometimes the question arises whether a man and a woman who have cohabited are validly married or not. Where there has been prolonged and continuous cohabitation as husband and wife, in the absence of direct proof a presumption arises that there was a valid marriage. Similarly, where a man acknowledges the woman as his wife, or the issue of the union as legitimate, a like presumption arises (Fyzee, 1949: 114).

Essentials of a Muslim Marriage

Preliminaries of Marriage: The very fact that marriage is looked upon as a contract in Islam, show that before marriage both parties must satisfy themselves that each will have a desirable partner for life in the other. The Qur'an lays down expressly: "Marry such women as seem good to you (ma taba la-kum)" (4:3). The Prophet (PBUH) is reported to have given an injunction to this effect: "When one of you makes a proposal of marriage to a woman, then if he can, he should look at what attracts him to marry her" (AD.12:18). The jurists are almost all agreed upon the *istihbab* (approval) of looking at the woman whom one intends to marry. And since the contract is affected by the consent of two parties, the man and the woman, and one of them expressly told to satisfy himself about the other by looking at her, it would seem that the woman has the same right to satisfy herself before giving her assent. The consent of both the man and the woman is an essential of marriage, and the Qur'an lays down expressly that the two must agree: "Prevent them not from marrying their husbands when they agree among themselves in a lawful manner" (2:232).

Proposal of Marriage: The word *khataba* which means he addressed (another) also signifies he made a proposal of marriage. The noun *khutbah* means an address and *khitbah* means proposal of marriage. When a man, who wants to marry, has satisfied himself about a woman, he makes a proposal of marriage either to the woman in question or to her parents or guardians. When a man has made a proposal of marriage to a woman, others are forbidden to propose to the same woman, till the first suitor has given up the matter, or has been rejected (Bu.67:46). A woman may also make a proposal of marriage to a man (Bu.67:33), or a man may propose the marriage of his daughter or sister to a man (Bu.67:34). When assent has been given to the proposal of marriage, it becomes a engagement, and usually a certain time is allowed to pass before the marriage (*nikah*) is

performed. This period allows the parties to study each other further, so that if there be anything undesirable in the union, the engagement may be broken off by either party: it is only after the nikah has been performed that the two parties are bound to each other (Ali, 1973: 508).

Offer and Acceptance:

Mahr and the Nuptial Gift: The second most important thing in marriage is mahr and dowry. Mahr forms an important feature in the matrimonial law of Islam. The concept of mahr in Islam has been much misunderstood and in sometimes misinterpreted since is either understood as a consideration made by the man to the woman as a bride-price or dowry but in reality is none of these (Shaukat Ali, 1987: 90).

The word generally used for dowry in the Qur'an is ajr meaning reward and a gift that is given to the bride. The word Saduqat is also once used in the Qur'an to signify the nuptial gift is farizah, literally what has been made obligatory or an appointed portion. According to Qur'an, the mahr is given as a free gift by the husband to the wife at the time of contracting the marriage: "And give women their dowries as a free gift" (4:4). The payment of the mahr on the part of the husband is an admission of the independence of the wife, for she becomes the owner of property immediately on her marriage. The settling of a dowry on the woman at the marriage is obligatory: "And lawful for you are all women besides those, provided that you seek them with your property, taking them in marriage, not committing fornication. Then as to those whom you profit by (by marrying), give them their dowries as appointed" (4:24). The payment of dowry is also necessary in the case of marriage with a slave girl. So "marry them with the permission of their masters and give them their dowries justly" (4:25); and also in the case of a Muslim marrying a non-Muslim woman: "And the chaste from among the believing women and the chaste from among those who have been given the book before you, when you have given them their dowries, taking them their dowries, taking them in marriage" (5:5).

The Privy Council declares it as "an essential incident to the status of marriage". Ali speaks of it to be of such significance that, "There can be no marriage with out mahr". The payment of dowry was necessary even though it might be a very small sum. In exceptional cases, marriage is legal even though the amount of mahr has not been specified, but it is

obligatory and must be paid either at the time of the consummation of marriage or afterwards. The amount of dowry in this case would depend upon the circumstances of the husband and the position of the wife. Therefore even if the dowry has not been specified at the marriage, it is to be determined and paid afterwards, and if unpaid in the husband's lifetime, it is a charge on his property after his death. Hanafi law treats it more or less as a debt.

No limits have been placed on the amount of mahr. The words used in Qur'an show that any amount of dowry may be settled on the wife: "And you have given one of them a heap of gold" (4:20). Generally mahr is treated simply as a check upon the husband's power of divorce, and very high and extravagant sums are sometimes specified as mahr. Later jurists divide mahr into two equal portions, one of which they call prompt (*mu'ajjal*) and the other deferred (*mu'ajjal*). The payment of the first part must be made immediately on the wife's demand, while the other half becomes due on the death of either party, or on the dissolution of marriage (Ali, 1973: 512-514).

Shighar: Among the pre-Islamic Arabs, shighar was a recognized form of marriage, a marriage by exchange, in which one man would give his daughter or sister or other in exchange for taking in marriage the other man's daughter or sister, neither paying the dowry. Such a marriage was expressly forbidden by the Prophet because it deprived the woman of her right of dowry (Bu.67:29); which shows that the woman's right of dowry is a right of which the wife cannot be deprived under any circumstances, and that it is her property and not the property of her guardians.

Publicity of the Marriage: Where the Qu'ran speaks of marriage "taking them in marriage, not fornicating, nor taking them for paramour in secret" (4:24,25;5:5). Thus, the one fact distinguishing marriage from fornication and clandestine relations is its publicity. The mutual consent of two parties to live as husband and wife does not constitute a marriage unless that consent is expressed publicly and in the presence of witnesses. An essential feature of the Islamic marriage is therefore the publication of the news by gathering together, preferably in a public place. The following tradition on this subject may be quoted: "Make public this marriage and perform it in the mosque and beat drums for it;" (Ali, 1973: 515).

What is strictly prohibited by the Holy Qur'an is to enter into secret matrimonial alliance. It has suggested in a very candid manner that marriage must be declared publicly:

“There is no blame
On you if ye make
An offer of betrothal
Or hold it in your hearts
God knows that ye
Cherish them in your hearts:
But do not make a secret contract
With them except in terms
Honorable, nor resolve on the tie
Of marriage till the term
Prescribed is fulfilled...”

The prohibition laid down by the Holy Qur'an to enter into a secret marriage contract seems to be in the interest of the woman, to protect her social reputation and dignity, otherwise she would be treated as a woman who has indulged herself in zina (fornication) with the result that she would never command respect in the society.

Marriage Sermon (Khutba):

A khutba (sermon) delivered prior to the announcement of marriage is recommended as it further helps towards the publicity of the marriage, as well as adduces the sacred nature of the contract. A tradition from Ibn Masud reports such a sermon or khutba being known as Tashahhud means act of bearing witness or the bearing of witness to the unity of God and Prophet hood of Muhammad (PBUH) when the friends and relatives of both parties have assembled a sermon is delivered by someone from among the party, or by the Imam or Qazi before announcing the marriage itself. The sermon concludes with the announcement of the marriage with the necessary formalities such of Ijaab and Qubul and Mahr. Though in India the consent of the woman is generally obtained through her father or other guardian or

relation. After the declaration and assent the guests usually pray for the welfare of the couple. Generally some sweets are distributed to the guests attending the reception (Shaukat Ali, 1987: 88-89).

Evidence of Marriage:

The Qur'an requires witnesses even for ordinary contracts and business transactions (2:282), and marriage is a contract of the highest importance, a contract affecting the lives of two persons to an extent to which no other contract affects them. It further requires witnesses even in the case of the dissolution of marriage by divorce. The Hanafi law rightly lays special stress on this point, so that marriage is not valid if at least two witnesses are not there. To procure the best testimony and one free from doubt of all kinds, it is quite in accordance with the law of Islam that all marriages should be registered (Ali, 1973: 518).

Walimah or Marriage Feast:

After nikah is over, the bride is conducted to the husband's house, and this is followed by the marriage-feast called walimah. This feast is another step in the publicity of the marriage, and hence the Prophet (PBUH) laid stress on it. It is related of 'Abd al-Rahman ibn 'Auf that the Prophet (PBUH) on being told of his marriage, prayed for him and told him to arrange for a feast though there is only one goat to feed the guest". Another tradition reported by Bukhari and Muslim says: "God's messenger set Safiya free and married her, making her freedom her dower, and held a feast for her with Hais". He himself invited his friends to a Valimah when he married Zainab which is said to have been a most sumptuous feast though only one goat was slaughtered"(M.16:15).

Condition Imposed at the Time of Marriage:

It is lawful to impose and accept conditions, which are not illegal, at the time of marriage, and the parties are bound by such conditions. The Prophet is reported to have said: "The best entitled to fulfillment of all conditions that you may fulfill, are the conditions by which sexual union is legalized" (Bu.67:53; AD.12:40). Illegal conditions are those which are opposed to the law of Islam or to public morality, for instance, that the wife shall have the right to frequent immoral places or that she shall not be entitled to any dower or maintenance or that the husband and the wife shall not inherit from each other. If such a

condition be imposed, the condition is void while the marriage is valid. Examples of legal conditions are that the wife shall not be compelled to leave her dar (conjugal domicile) (AD.12:40), that the husband shall not contract a second marriage during the existence of the first, that the husband and the wife or one of them shall live in a specified place, that a certain portion of the dower shall be paid immediately and the remainder on death or divorce, that the husband shall pay the wife a certain amount by way of maintenance, that he shall not prevent her from receiving visits from her relatives, that the wife shall have the right to divorce for a specified reason or for any reasonable cause, and so on (Ali, 1973: 524-525).

Selection of a Spouse:

One of the most critical questions connected with marriage and formation of a family is that of choosing the spouse. In this connection attention should be paid to the following points:

- Freedom in the selection of wife or husband.
- Equality between husband and wife, each of them should be generally suitable to marry the other.
- The criteria which should be kept in view to determine such suitability.
- Persons between whom marriage is forbidden.
- Seeking the hand of the spouse in marriage.

Freedom in choosing husband/wife is a principle to which Islam has paid much attention, for satisfactory conjugal life depends on intellectual, spiritual and moral compatibility between the two spouses. This compatibility can exist only if both the parties are free in their choice and choose each other of their own free will after careful study and without any coercion. Otherwise their conjugal life cannot be expected to be smooth and satisfactory.

The choice of a partner should be the one with the most "taqwa" (piety). The prophet recommended the suitors see each other before going through with marriage. It is unreasonable for two people to be thrown together and be expected to relate and be intimate when they know nothing of each other. The couple is permitted to look at each other with a

critical eye and not a lustful one. This ruling does not contradict the ayah which says that believing men and women should lower their gaze. The couple, however are not permitted to be alone in a closed room or go out together alone. As the hadith says "when a man and a woman are together alone, there is a third presence i.e. shaitan."

Consent of Parties:

One of the conditions of a valid marriage is consent of the couple. According to Islamic law the first condition of the validity of a marriage contract is that it should be proposed by the man and accepted by the woman and both of them should act freely in the matter. The Imams on various occasions, especially when they were consulted about the selection of a wife or a husband, emphatically stressed that the main condition of the validity of a marriage is the free consent of both the parties. No imposition is allowed in this respect. The choice of a partner by a Muslim virgin girl is subject to the approval of the father or guardian under Maliki School. This is to safeguard her welfare and interests. The prophet said "the widow and the divorced woman shall not be married until she has consented and the virgin shall not be married until her consent is obtained. The prophet did revoke the marriage of a girl who complained to him that her father had married her against her wishes. A young man complained to Imam al Sadiq that his parents were compelling him to marry a girl whom he did not like, whereas he was interested in another girl. He then asked the Imam what he was required to do in that case. The Imam said: "Marry the girl you like". In this connection it may be remembered that the parents must not compel their children to marry against their will. (Ayatollah, 1988: 371-372).

Marriage by Fraud or Compulsion:

A contract of marriage brought about by exercising fraud is void. No mahr will be due unless the marriage has subsequently been ratified by consummation or otherwise. In a case a Muslim girl of Sunni sect was at the time of her marriage suffering from a serious illness of which she died before consummation. The husband was not aware of her illness at the time of the marriage, and this illness was suppressed by the father of the girl, it was held that as the consent of the husband was obtained by fraud, the marriage was invalid and that under the circumstances the husband was not liable to pay the dower of deceased. Under Hanafi Law, however, marriage is valid even though the contract has been made under

compulsion or the declaration or acceptance is pronounced without any intention to contract a marriage (Hussain, 1989: 176-177).

The Husband/Wife Relationship:

As soon as the marriage is validly contracted, the marriage ties are established and the rights and duties of the married parties commence, even before the consummation of marriage. It also renders sexual intercourse between the parties lawful.

The wife's rights - the Husbands obligations.

(1) Maintenance

The husband is responsible for the wife's maintenance. This right is established by authority of the Qur'an and the Sunnah. It is inconsequential whether the wife is a Muslim, non-Muslim, rich, poor, healthy or sick. A component of his role as "qawam" (leader) is to bear the financial responsibility of the family in a generous way so that his wife may be assured security and thus perform her role devotedly.

The wife's maintenance entails her right to lodging, clothing, food and general care, like medication, hospital bills etc. He must lodge her where he resides himself according to his means. The wife's lodge must be adequate so as to ensure her privacy, comfort and independence.

If a wife has been used to a maid or is unable to attend to her household duties, it is the husband's duty to provide her with a maid if he can afford to do so. The prophet is reported to have said: The best Muslim is one who is the best husband.

(2) "Mahr"

The wife is entitled to a marriage gift that is her own. This may be prompt or deferred depending on the agreement between the parties. A marriage is not valid without mahr. It does not have to be money or gold. It can be non-material like teaching her to read the Qur'an. "Mahr" is a gift from the groom to the bride. This is the Islamic law, unlike some cultures whereby the bride's parents pay the future husband to marry the daughter. This practice degrades women and is contrary to the spirit of Islam. There is no specification in the Qur'an as to what or how much the Mahr has to be. It depends on the parties involved.

(3) Non-material rights:

A husband is commanded by the law of Allah to treat his wife with equity, respect her feelings and show kindness and consideration, especially if he has another wife. The prophet last sermon stresses kindness to women.

The wife obligations - the Husbands rights:

One of the main duties of the wife is to contribute to the success and blissfulness of the marriage. She must be attentive to the comfort and wellbeing of her husband. The Qur'anic ayah which illustrates this point is:

"Our lord, grant us wives and offspring who will be the apples of our eyes and guide us to be models for the righteousness." (Q.25:74)

The wife must be faithful, trustworthy and honest she must not deceive her husband by deliberately avoiding contraception. She must not allow any other person to have access to that which is exclusively the husband right i.e. sexual intimacy. She must not receive or entertain strange males in the house without his knowledge and consent. She should not be alone with a strange male. She should not accept gifts from other men without his approval. This is meant to avoid jealousy, suspicion and gossip. The husband possessions are her trust. She may not dispose of his belongings without his permission.

A wife should make herself sexually attractive to her husband and be responsive to his advances. The wife must not refuse her husband sexually as this can lead to marital problems and worse still - tempt the man to adultery. The husband of course should take into account the wife's health and general consideration should be given.

Obedience:

The purpose of obedience in the relationship is to keep the family unit running as smoothly as possible. The man has been given the right to be obeyed because he is the leader and not because he is superior. If a leader is not obeyed, his leadership will become invalid -Imagine a king or a teacher or a parent without the necessary authority which has been entrusted to them.

Obedience does not mean blind obedience. It is subject to conditions:

- (a) It is required only if what is asked from the wife is within the permissible categories of action.
- (b) It must be maintained only with regard to matters that fall under the husband rights (www.islamonline.net).

2.5. Polygamy:

Although the taking of plural wives by a man is commonly called polygamy, the more correct sociological designation is polygyny. This institution is probably the Islamic tradition most misunderstood and vehemently condemned by non-Muslims. Muslims view polygyny as an institution which is to be called into use only under extraordinary circumstances (Sharma, 2007: 202-203).

Polygamy means a system of marriage whereby one person has more than one spouse. Polygamy can be of two types. One is polygyny where a man marries more than one woman, and the other is polyandry, where a woman marries more than one man. In Islam, limited polygyny is permitted and polyandry is completely prohibited. According to Murdock, "polygyny can be said to exist, of course, only when the plural marriages are contemporaneous...and secondly, all the unions must be genuine marriages, involving residential cohabitation and economic cooperation as well as sexual association". A polygynous union must have the support of culture and public opinion. Polygyny may create some social problems like jealousy among co-wives and competition for the favor of husband. Some practical restrictions on polygyny may occur due to economic, demographic and social factors. In spite of these limitations, polygyny has been permitted by Islam though monogamy is regarded as the ideal form of marriage (Qur'an-iv: 129). Though Islam permits polygyny, yet it is neither prohibited nor sanctioned without any reason. Polygyny is permitted under unavoidable circumstances at a certain stages of development.

As a rule, Islam recognizes only the union of one man and one woman as a valid form of marriage. Under exceptional circumstances it allows the man more wives than one, but does not allow the woman more husbands than one. Thus while a married woman cannot contract a valid marriage, a married man can do it. There is no difficulty in understanding this differentiation, if the natural duties of man and woman in the preservation and upbringing of the human species are kept in view. Nature has so divided the duties of man

and woman, in this respect that while one man can raise children from more wives than one, one woman can have children only from one husband. Therefore while polygamy may at times be a help in the welfare of society and the preservation of the human race, polyandry has no conceivable use for man (Muhammad Ali, 1973: 525).

There are many misconceptions in circulation regarding the status of women in Islam and this made the Muslim women's status rather ambiguous. Nature of permissibility of polygyny and divorce in Islam and also in Muslim society are the issues that raised a good deal of controversy, especially in India. Muslims are the largest minority in India. They constitute 12.12 per cent of India's total population, with a sex ratio of 927 females per 1000 male (Census, 1991). Modernization and change is the order of the day, but Muslims are found to lag behind. For various reasons Muslims are noted to be a impoverished, backward, tradition-bound but self-conscious people. Perhaps due to the influence of these and other factors, social reform has experienced a setback in Muslim society. There is prevailing notion that the incidences of polygyny and divorce are very high among Muslims and these cause serious problems to Muslim women's life. Therefore empirical assessment of the situation is considered essential. (Engineer, 2001: 129-130).

Polygamy or plurality of wives is one of the controversial questions connected with the family system of Islam. The institution of polygamy in Islam has been a hotly debated issue. Though monogamy has been the normal practice in Muslim societies and polygamy an exception, there is a general impression in the West that Islam has introduced, encouraged and widely practiced polygamy. The erotic concept of a harem coupled with a belief that the generality of Muslim males and not just a handful of medieval rulers, princes and aristocrats maintained harems is largely responsible for this wrong impression (Serajuddin, 1999: 124).

Polygamy in Pre-Independent India:

In Mughal period, the practice of polygamy was very common in India. The Mughal kings including Humayun, Akbar, Jahangir, Shahjahan, Aurangzeb and Bahadur Shah Zafar practiced polygamy. Besides the legal wives, they used to keep Harams, where a large number of girls were kept to entertain the kings. The immediate impact of the polygamous behaviour of the kings was observed in the whole Muslim society. Therefore, it was not taken otherwise by the society to have more than one wife; rather it was considered as the

mark of luxury of the rich. The rulers of the princely states, feudal lords and landlords also practiced polygamy.

Subsequently in British India too, the institution of polygamy remained in practice and not only the rich but also the middle-class Muslims used to have at least two wives. And they did it in the guise of Islam: that the Divine Law has permitted them to enjoy the privilege of having more than one wife. Women were accustomed to submit to such matrimonial set-up and they were highly tolerant to share their conjugal beds. It is observed that in the feudal Muslim society, mostly the first wife used to belong to equal social status of her husband, and the second wife, particularly in the lifetime of the first one, either belonged to low status or was a prostitute (Ephroz, 2003: 120).

As a matter of fact, Islam has neither introduced nor encouraged polygamy. It was a common practice among most ancient nations; and prior to the advent of Islam it was also widespread in Arabia because of abundance of orphans and widows caused by frequent tribal war fares. It should be remembered that the custom of polygamy existed before the advent of Islam among the Jews, the Arabs, the Persians and many other peoples of the world. All that Islam has done is that it has restricted it (Behishti, 1988: 405-406).

Qur'an is the only religious book, on the face of this earth, that contains the phrase 'marry only one'. There is no other religious book that instructs men to have one wife. In none of the religious scriptures like the Vedas, the Ramayana, the Mahabharata, the Geeta or the Bible does one find a restriction on the number of wives. According to these scriptures one can marry as many as one wish. It was only later, that the Hindu priests and the Christian Church restricted the number of wives to one. Many Hindu religious personalities, according to their scriptures, had multiple wives. King Dashrat, the father of Rama, had more than one wife. Krishna had several wives. In earlier times, Christian men were permitted as many wives as they wished, since the Bible puts no restriction on the number of wives. It was only a couple of centuries ago that the Church restricted the number of wives to one.

During middle Ages it was propagated in Europe that the practice of polygamy was first introduced by Islam. Will Durant has denied this charge. He in his book, History of Civilization (vol.1 p. 61), says: The clerics in the middle Ages thought that polygamy was an innovation of the Prophet of Islam. But that is not the case. As we have seen, it has been

practiced in most of the primitive societies. Without paying attention to its natural or social causes the Europeans over many centuries tried to described polygamy as a big weakness of the Islamic teachings. At last some scholars exploded this myth and showed how topsy turvy is the picture painted of this custom and how unjust is its attribution to Islam (Behishti, 1988: 405-406).

Polygamy before Islam:

Polygamy was a recognized institution. It existed among the Hindus, Babylonians, Assyrians, Persians, Israelites, Athenians and Romans from the earliest times. Prior to the advent of Islam, unrestricted polygamy, which was sanctioned by usage and custom, was prevalent among the ancient Arabs and Jews. In pre-Islamic Arab society women had no recognized place and they were in a state of subjugation. Marriage rules were highly flexible. Pre-pubertal child marriage was a common practice. Marriage by capture and purchase were also prevalent. Unrestricted polygyny was the order of the day. Polygyny was so prevalent that there was no rule regarding the number of wives that an Arab could keep at a time. According to a report of Tafsir-i-Tabari, an Arab then could marry many women at a time without any restriction, as it was allowed by the customary law of ancient Arabia. Husbands were free to divorce their wives whenever they felt so. Often the women were divorced at the whim and pleasure of the husbands. Only the males had right to divorce among the Arabs. Thus it may be assumed that the women in pre-Islamic Arab society used to suffer from several social injustices owing to unrestricted polygyny and unilateral form of divorce. But emergence of Islam and the social reform instituted by Prophet Mohammad (PBUH) has a great impact on these systems (Engineer, 2001: 130-131).

The Qur'an at the advent of Islam reformed the existing law by restricting the number of wives as man might have four concurrent wives. Islam is blamed for permitting polygamy but the permission given by it is not absolute or unconditional as is commonly presumed. It has strong restrictions, firstly, the number of wives should not exceed four at a time and secondly, the wives should be treated equally and alike.

The actual teaching of the Holy Qur'an represented monogamy as an ideal form of marriage. Islam allows polygamy on three basic conditions:

- Preservation of the purity and cordiality of family life so that it may not become the cause of disruption of the family affairs.

- Number of wives not to exceed four.
- Equitable treatment of all the wives.

In the first place it must be borne in mind that polygamy is allowed in Islam only as an exception. It is expressly so stated in the Qur'an Sura IV, verse 3: " And if ye fear that you cannot do justice to orphans, marry such women as seem good to you, two or three or four; but if you fear that you will not do justice (between them), then (marry) only one" (4:3). This is the only passage in the Qur'an that speaks of polygamy, and it will be seen that it does not enjoin polygamy; it only permits it and that too, conditionally (Ephroz, 2003: 106-108).

- It is unanimously accepted that the above verse about plurality of wives was revealed shortly after the battle of Uhud. In that battle some seventy Muslims were killed that created several problems regarding the widows and orphans for whom the Islamic community had to care. So in order to meet this sudden increase in the number of unattached women the encouragement was given to polygamy.
- The other most important aspect is that the Qur'an connects the matter with just conduct towards 'Orphans' (yatama). This indicates that the problem of excess of women was not the widows but the unmarried girls who now came under the guardianship of uncle, cousins and other kinsmen and these guardians due to their selfish motive kept the women and girls unmarried in order to have unrestricted control of their property .
- The practice of polygamy not only solve the problem of excess of women but it proved very effective in preventing of practice of female infanticide and the sale of women captives out of the country as slaves which was very common at that time (Chaturvedi, 2004: 162-163).

It means the general impression carried by the people that Islam freely allows polygamy and is totally against monogamy is not correct. In fact, Islam allows polygamy in a restricted sense; otherwise the general rule is monogamy, because the interpretation to the exact and true meaning of the concerned mandate in the Qur'anic verse gives quite a contrary picture. The conditions and restrictions imposed by the Holy Qur'an seem to have gone completely unnoticed by the Muslims in general who seem to have thought

that they have a free license to marry up to four wives at a time. The clear effect of the verse of the Holy Qur'an, if analyzed and understood in its real perspective would reveal that the effect of the mandate contained in the words of God is that a Muslim can marry up to four wives, if he is in a position to do equal justice to all.

But subsequently, it is ordained to maintain equally in love and affection which is almost impossible though there is ardent desire: "Ye are never able, To be fair and just, As between women, Even if it is, Your ardent desire:..."

Adl' (just) also signifies equality in love and affection but it is quite natural that a man may be more inclined to a particular wife. Control of mind is in the hand of God and so a man is not guilty if his mind naturally turns to one wife, but he can treat all his wives equally regarding residence and company. The Holy Qur'an has permitted to have more than one wives, with the condition that all must be treated with perfect justice; practically this is not possible on the part of common man, therefore, this Qur'anic provision should be interpreted that it is a qualified right and actually a step to introduce the institution of monogamy.'

The Prophet Mohammad (PBUH) has said: "If a man has two or more wives being all free women, it is incumbent upon him to make an equal partition of his cohabitation among them." But the Prophet used to pray God to forgive him: "Oh Almighty this partition is equal for those things which are within my control. Oh Almighty don't hold me to maintain equally to all which is absolutely in thy control, not mine."

The above mentioned Hadith gives an impression that a person is capable to maintain equality in relation to maintenance but not in affection, because it is not within his control to love equally and Prophet Mohammad (PBUH) himself was afraid to maintain that sort of equality, and therefore prayed for forgiveness. The following Hadith will prove the fact that he has more adoring and expressive to Hazrat Aisha, and it was not in his control.

Therefore polygyny is not a rule but an exception. Many people are under the misconception that it is compulsory for a Muslim man to marry more than one wife. It cannot be said that a Muslim who has two, three or four wives is a better Muslim as compared to a Muslim who has only one wife (Ephroz, 2003: 106-108).

Why is Polygamy allowed in Islam:

Polygamy is permitted in Islam under special circumstances, with certain terms and conditions. The reasons behind sanction of polygyny in Islam were historical and circumstantial. In abnormal circumstances like war when large number of men were decimated and balance between the sexes was seriously shaken, on such an instance polygyny was permitted to overcome the social problems. Further, polygyny was one of the various measures to prevent illegal relationships or delinquent sexual behaviour. Polygyny was introduced as a form of marriage to meet the exigency of the situation. The rules of polygyny in Islam are said to have become established in response to certain pressing situation (Engineer, 2001: 131-132).

The Inequality in numbers: Average life span of females is more than that of males.

Records show that male and female births are almost equal in number. But a study of mortality shows that the rate is higher for men than for women. This disparity is in evidence from early childhood to extreme old age. According to the Encyclopaedia Britannica: "In general, the risk of death at any given age is less for females than for males." A female child can fight the germs and diseases better than the male child. During wars, there are more men killed as compared to women. More men die due to accidents and diseases than women. The average life span of females is more than that of males, and at any given time one finds more widows in the world than widowers.

When war breaks out, the majority of the casualties are men. In the First World War (1914-18) about 8 million soldiers were killed. Most of the civilians killed were also men. In the Second World War (1939-45) about 60 million people were killed, most of them men. In the Iraq-Iran war alone (1979-1988), 82,000 Iranian women and about 100,000 Iraqi women were widowed. All in the space of ten years. Another drain on the availability of men in society is imprisonment. In the U.S., the most civilized society of modern times, no less than 1,300,000 people are convicted daily for one crime or another. A number of them- 97 per cent of whom are men –are obliged to serve lengthy prison sentences. The modern industrial system too is responsible for the lower proportion of men in society, death by accident having become a matter of daily routine in present times. According to data collected in 1967, in that year a total of 175,000 people died as the result of accidents in fifty different countries. Most of these were men (wahiduddin, 1995: 186-188).

India has more male population than female due to female feticide and infanticide. India is one of the few countries, along with the other neighboring countries, in which the female population is less than the male population. The reason lies in the high rate of female infanticide in India, and the fact that more than one million female fetuses are aborted every year in this country, after they are identified as females. If this evil practice is stopped, then India too will have more females as compared to males.

World female population is more than male population. In the USA, women outnumber men by 7.8 million. New York alone has one million more females as compared to the number of males, and of the male population of New York one-third are gays i.e. sodomites. The USA as a whole has more than twenty-five million gays. This means that these people do not wish to marry women. Great Britain has four million more females as compared to males. Germany has five million more females as compared to males. Russia has nine million more females than males. God alone knows how many million more females there are in the whole world as compared to males.

Restricting each and every man to have only one wife is not practical. Even if every man got married to one woman, there would still be more than thirty million more females in USA who would not be able to get husband (considering that America has twenty five million gays). There would be more than four million females in Great Britain 5 million females in Germany and nine million females in Russia alone who would not be able to find a husband. In Western society it is common for a man to have mistresses or extramarital affairs in which case the woman leads a disgraceful, unprotected life. Thus the only two options before a woman who cannot find a husband are to marry a married man or to become public property. Islam prefers giving women the honorable position by permitting the first option and disallowing the second. There are several other reasons, why Islam has permitted limited polygyny, but it is mainly to protect the modesty of women.

The Willingness of Women: The presence of a greater number of women in a society is not the only prerequisite for polygamy. It has to be added that polygamy in Islam is a matter of mutual consent. It is compulsory that the woman who is object of the man's choice should be willing to enter into the married state. No one can force a woman to marry a married man. This willingness on the woman's part is a must before a marriage can be lawful in Islam. It is unlawful to marry a woman by force. Besides, the wife has the right to stipulate

that her husband must not marry any other woman as a second wife. The Bible, on the other hand, sometimes resorts to forcible polygamy. A childless widow must marry her husband's brother, even if he is already married, regardless of her consent. There is no example in the history of Islam where a man has been allowed to force a woman into marriage. The Prophet Muhammad's own view that "an unmarried girl should not be married until her permission has taken " had been recorded by both Bukhari and Muslim. The present age gives great importance to freedom of choice. This value is fully supported by Islamic law.

It should be noted that in many Muslim societies today the practice of polygamy is rare since the gap between the numbers of both sexes is not huge. One can safely say that the rate of polygamous marriages in the Muslim world is much less than the rate of extramarital affairs in the West. In other words, men in the Muslim world today are far more strictly monogamous than men in the Western world (Sharma, 2007: 151).

Polygamy and Legislation:

Legislations were introduced to restrain the frequent practice of polygamy. Since British period, statutory protection was provided to the Indian Muslim women. The Indian Penal Code (IPC), Under Sections 494 and 495, has recognized the right of the Muslim man to practice polygamy within the limit of Muslim law: one can have more than one wife at a time, hence sections 494 and 495 of IPC dealing with the offence of bigamy will have no effect on the freedom of Muslims, however, this law will be applicable where the bigamous marriage is void under the Muslim law itself. Section 2 (vii) (f) of the dissolution of Muslim Marriage Act, 1939 has tried to restrict and control this right of a Muslim man and has provided that a Muslim woman shall be entitled to obtain a decree for dissolution of her marriage: "If he has more wives than one, does not treat her equitably in accordance with injunctions of Islam." She is protected from discrimination and hurts. And in the second legislation, i.e., Criminal Procedure Code, 1898, the wife has the right to refuse to live with the husband and may claim separate maintenance when he has taken a second wife. This legislation have introduced a very dynamic reform in the Indian Muslim society, and have incorporated the Qur'anic provision that all the wives should be treated on the basis of equality and justice in case a husband has taken a second wife. These legislations have codified the Qur'anic provision that all the wives should be treated equitably (Ephroz, 2003: 120-121).

Polygamy and Judiciary:

The courts have played a very effective role in controlling the practice of polygamy. Firstly, by recognizing the right of delegated divorce (talaq-e-Tafweed) in favour of the wife in the event of the husband having taken another wife, and secondly by refusing the restriction of conjugal rights to a bigamous husband.

Treating Muslim marriage as a contract, the courts have held that any agreement entered into by the parties, if not opposed to public policy or the spirit of Muslim law, would be enforceable. Thus, both pre-nuptial agreement of wife to get a divorce, if the husband takes a second wife, was held to be valid. The Calcutta High Court upheld successively the conditions stipulated in the marriage deed. It held that a "Muslim wife can divorce her husband under delegated power in the event of his taking a second wife," And in another case it held : "A Muslim wife can stipulate for the power to divorce herself in case of the husband availing of his legal right to take another wife."

The Lahore High Court pronounced its judgment in consonance with the Qur'anic principles as well as the provisions of the Act that the wife should be treated with Adl, or equity in case of the husband taking a second wife. It observed: "A Muslim male may have four wives subject to the condition that all the wives be treated justly and equitably."

Thus the approach of judiciary is positive and upholds the Qur'anic spirit in process of dealing with polygamy, with reference to treatment of wives by the polygamous husband(Ephroz, 2003: 121-123).

Polygamy in Contemporary India:

Although no exact figure is available, but according to a reliable study based on an all-India survey, less than one percent of Muslims in urban areas have more than one wife. In fact, after the merger of the princely states and abolition of zamindari system, the practice of polygamy is being diminished among the elite class of Muslims.

Mr. Justice Krishna Iyer, who is not only a judge but a great social philosopher, is of the opinion that the words of the Holy Qur'an say that if a man cannot treat his two wives with perfect equality, he is enjoined to marry only one wife. It is obvious that in modern Indian conditions, howsoever financially, physically, sexually potent a husband may be, it is beyond his capacity to show equal justice in every respect to a plurality of wives.

Thus, in modern times polygamy is decreasing. This is due not only to restrictions which the law has in some instances placed upon its practice, but to economic conditions which make it difficult for a man to support two or more households, and also more significantly, to the spread of education which has made women less willing to accept a polygamous marriage and husband less inclined to think such an arrangement desirable. In some countries a husband is required to obtain the permission of the court before taking a second or subsequent wife. This is the position at the present time in Syria, Iraq, Iran, Pakistan and Singapore. Also in most countries in the Middle East, and also in India and Pakistan, a wife may now stipulate in her marriage contract that her husband shall not take a second wife.

In India, Muslims may still marry second and subsequent wives without obtaining permission from court. The court held that in India the institution of polygamy was tolerated but not encouraged. Counsel for the husband had contended that under Islamic law taking a second wife could not be construct as cruelty to the first wife, whether it would cause such bodily or mental pain as to the first wife's safety or health. Under present social conditions, it held, the taking of a second wife must be regarded as an insult to the first wife which is likely to cause her mental suffering and consequently affect her health.

The attitude of the Indian Government towards polygamy is illustrated by various regulations which aim at restricting polygamous marriages among certain sections of the population. No Government employee, for example, may contract a second marriage while his first marriage is still in existence, without the prior permission of the Government. Nor may a female employee marry any person who has a wife already living without first obtaining the permission of the Government (Islam and Modern Age, 1970: 19-30).

There is a myth about polygynous character of Muslims and it is also very often projected that the Muslim population is increasing due to practice of polygyny among them. But empirical studies have shown that the proportions of polygynous marriages are very low among Muslims in India (Ahmad, 1976).

According to the report of the committee on status of women in India during the decades 1931-41, 1941-51 and 1951-61, the percentage of polygynous marriage among the Muslims were: 7.29 percent, 7.06 percent, and 4.30 percent respectively. While the corresponding figures among Hindus were: 6.79 per cent, 7.15 percent and 5.06 percent and

among tribals the frequencies were: 9.13 per cent and 17.98 per cent respectively. Thus it is clear that the incidence of polygyny is low among Muslims and there had been a gradual decrease of polygynous marriages among them.

A study was conducted by the Census Department, Govt. of India, 1961, on the practice of polygyny in the country. The study revealed that the incidence of polygynous marriage was the highest among Tribals (15.25 per cent), next came Buddhist (7.97 per cent), and followed by Jains (6.72 per cent), Hindus (5.80 per cent) and Muslims (5.73 per cent). Thus it is seen that the incidence of polygyny was lowest among the muslims (Census of India: 1971) (Engineer, 2001: 137).

The report of the 'Committee of the Status of Woman in Islam', published in 1975 mentions on page numbers 66,67 that the percentage of polygamous marriages between the year 1951-1961 was 5.06 among the Hindus and only 4.31 among the Muslims. According to Indian law only Muslim men are permitted to have more than one wife. It is illegal for any non-Muslim in India to have more than one wife. Despite it being illegal, Hindus have more multiple wives as compare to the Muslim. One can imagine what would have been the percentage of polygamous marriages among the Hindus if the Indian government had made it legal for them. Earlier, there was no restriction even on Hindu men with respect to the number of wives allowed. It was only in 1954, when the Hindu Marriage Act was passed that it became illegal for a Hindu to have more than one wife. At present it is the Indian Law that restricts a Hindu man from having more than one wife and not the Hindu scriptures (www.islam.onlie.net).

2.6. Dower

Muslim constitutes more than 12 per cent of India's population and nearly 50 per cent of them are women. The unhappy fact remains that women in the Muslim community are almost as suppressed as women in general in Indian society. It is only the form and content of exploitation that varies from one religious community to another. The Qu'ran lays down many rules regarding matrimonial relations, the social position of women and their legal and economic right. It has prescribed certain laws regarding maintenance, mahr (dower), inheritance and sharing of property by women in their different roles as daughter, sister, mother and wife. In practice Muslim women are not able to enjoy these rights. The reason is their lack of awareness and feeling of helplessness. This is keeping them backward

and suppressed. They are unable to continue fully to the social, political and economic life of their community (Ahmad, 1987: 317).

In the first era of Islam marriage was a simple affair, without pomp or ceremony. Any expenditure incurred in its performance was quite minimal, and not a burden on either family. Indeed, the Prophet (PBUH) stated: “the most blessed marriage is one in which the marriage partners place the least burden on each other”. (al-Haythami, Kitab ab-Nikah, 4:225). Nowadays, much difficulty and hardships can be caused by the setting and giving of dowries, bride-prices and mahr, enormous wedding feasts and celebrations in some cultures which bring a most unreasonable financial burden on the families concerned. Financially crippling celebrations are totally in opposition to the spirit of Islam, and are not necessary. They are purely a matter of the culture of certain regions. It is very important that Muslims themselves realize that there is an enormous difference between dowry, bride-price and mahr. Many books and articles on the subject confusingly use the word dowry to mean mahr, but in fact the correct word for dowry is jahaz, and its function is totally different.

What is a dowry?

The custom of giving dowry (jahaz) is not a part of Islam, although it actually seems to be on the increase among several Muslim cultures, notably those of Indian, Pakistani and Bangladeshi origin. In fact, it is a practice which has never been sanctioned by Islam and is not prevalent amongst Muslims of other cultures. It seems to be in imitation of ancient Hindu culture in which daughters were not given any share in the family property, but were given payments, part of which might be in the form of household goods, as a measure of compensation. In imitating this Hindu custom in India, Muslims are denying their daughters their rightful share in the family property to which they are entitled under the Islamic law. The practice of “compensating” for this by giving them wedding presents and labeling these jahaz or “dowry” is in reality a deliberate evasion of the Islamic law of inheritance (Khan, 1995: 211).

‘A bride-price’ is either an amount of money, goods or possessions given to the bride by the bride’s family at the time of her marriage, in order to attract a good husband for her. It would in effect become the property of the husband or his family upon his marrying her. This is a totally un-Islamic practice. In Islam, women are not ‘owned’ by their families and should not be ‘traded with’ in this manner. It is an insulting practice. In the jahiliyyah

society before Islam, this money was regarded as the property of the girl's guardian (www.islamfortoday.com).

Ameer Ali says that in pre-Islamic times it was an essential condition to the validity of a marriage, that the husband should settle on the wife a certain dower which became her exclusive property. The custom originated in ancient times with the payments which the husbands often made to their wives as a means of support, and as a protection against the arbitrary exercise of the power of divorce. It was a common custom prevalent at that time Arab husbands frequently despoiled their wives, and turned them a drift on the world absolutely helpless and without means.

Prior to Islam, two kinds of marital gifts were prevalent. In a certain type of marriage, the so-called beena marriage, where the husband visited the wife but did not bring her home, the wife was called *sadiqa* or female friend, and a gift given to the wife on marriage was called *sadaq*. In Islam *sadaq* simply means a dowry and is synonymous with *mahr*. But originally the two words were quite distinct: *sadaq* is a gift to the wife, and *mahr* to the parents of the wife. The latter term belongs to the marriage of dominion, which is known as the *baal* marriage, where the wife's people part with her and have to be compensated (Fyzee, 1949: 132).

Under the Jewish law it was necessary to mention total debt prior to the contract of marriage. A different system was prevalent among the Hebrews. Under the Hebrew law, a wife was not ordinarily entitled to dower. She acquired right over her dower only when her marriage was dissolved by way of death of her husband or by divorce. An Athenian or Roman woman brought the dowry along with her. Dowry is also prevalent amongst English men. In England, any property the woman brings with her is popularly called the dowry (Qureshi, 1995: 95-96).

Now *mahr* in the *baal* form of marriage was used by the Prophet (PBUH) to ameliorate the position of the wife in Islam, and it was combined with *sadaq*, so that it became a settlement or a provision for the wife. In Islamic law, *mahr* belongs absolutely to the wife. Thus, historically speaking, the idea of sale is latent in the law of *mahr* (dower). Mr. Justice Mahmood defines dower as follows: "Dower, under the Muhammadan law, is a sum of money or other property promised by the husband to be paid or delivered to the wife in consideration of the marriage, and even where no dower is expressly fixed or mentioned

at the marriage ceremony, the law confers the right of dower upon the wife. It is not 'consideration' in the modern sense of the term; but an obligation imposed by the law upon the husband as a mark of respect to the wife (Fyzee, 1949: 132-133).

The mahr, according to Islamic scriptures, is a sum, a man must pay to the woman he is going to marry. The amount of mahr is determined keeping in view the status of the man. According to Islam, if mahr has not been paid by the husband during his lifetime, it has to be paid out of his bequest after his death. Islamic law also lays down that if the husband divorces his wife he must pay her the mahr and give her proper maintenance allowance as long as she does not remarry or does not find an alternative means of support. Verse 241 of Surat Al-Baqarah runs as follows: 'For the divorced women maintenance should be provided on a reasonable scale. This is the duty of a righteous husband.' This arrangement seems reasonable if followed according to the spirit of the precept (Ahmad, 1987: 318).

In pre-Islamic Arabia, sadaq was a gift to the wife; but mahr was paid to the wife's father, and could therefore be regarded as amount to sale-price. But when Islam insisted on its payment to the wife, it could no longer be regarded strictly as a sale. Thus Islam sought to make mahr into a real settlement in favour of the wife, a provision for rainy day and, socially it became a check on the capricious exercise by the husband of his almost unlimited power of divorce. A husband thinks twice before divorcing a wife when he knows that upon divorce the whole of the dower would be payable immediately (Fyzee, 1949: 133).

It is a fundamental principle of the Islamic law, both traditional and as applied by the court in India, that the dower (mahr) is an essential element in the marriage contract. There can be no marriage without dower and in Hanafi law even if the parties to the contract expressly stipulate that no dower shall be payable, the law will read into the contract a 'proper dower' clause which will entitle the wife to a dower calculated with reference not only to her social and physical attributes, age, beauty, virginity, etc., but also to the amount paid to other female members of her family (Doreen Hinchcliffe: The Widow's dower-debt in India: pp.5, Islam and Modern Age, vol.4. no. 3, August-1973).

The other words for mahr generally used in the Qur'an are sadaqah and ajr, meaning reward or gift to the bride in which there is profit but no loss. Allah commanded: 'Give women their faridah as a free gift.' (4:4).

It is a gift of money, possessions or property made by the husband to the wife, which becomes her exclusive property. It is an admission of her independence, for she becomes the owner of the money or property immediately, even though she may have owned nothing before. It has nothing to do with either of their parents, except that a husband might need to take a loan. This should only be done with the intention of repayment. It is also intended as a token of the husband's willing acceptance of the responsibility of bearing all the necessary expenses of his wife.

Even if the wife owned no property or money of her own before her marriage, she is given this money or property when she marries so that she commences her married life in her new status with money or property of her own. The wife gives herself and her services to her husband, and in return he gives her property to own herself, even if she had nothing before, and pledges that he will maintain her. Muslim women are placed in charge of the internal arrangement of the household, while Muslim men are responsible for its financing (even if the wife earns her own money subsequent to her marriage) (www.islamfortoday.com).

In Islam, the right of the wife to her dower is a fundamental feature of Muslim marriage; it has a pivotal place in the scheme of the domestic relations affecting rights of the spouses at more than one point. It is debt upon the husband to be paid out of his estate. The dower of a woman is a settlement in her favour made prior to the marriage contract. Tyabji says that 'Mahr or dower is the sum that becomes payable by the husband to the wife on marriage, either by agreement between the parties, or by operation of law, Mulla says Mahr or dower is a sum of money or other property which the wife entitled to receive from the husband in consideration of the marriage (Fyzee, 1949: 96-97).

There are a number of verse in the Qur'an ordained that a woman's mahr belong to her and not to anybody else whether father or husband. The Qur'an says: 'And give unto the women (whom ye marry) free gift of their marriage portions; but if they of their own accord remit unto you a part thereof, then ye are welcome to absorb it (in your wealth)' (Surat An-Nissa: 4). The Qur'an encourages a man to give as much possible to his wife. It says: 'And if ye wish to exchange one wife for another and ye have given unto one of them a sum of money (however great), take nothing from it. Would ye take it by the way of calumny and open wrong?' (Surat An-Nissa: 20). When the second Caliph Hazrat Umar wanted to impose

a ceiling on mahr a woman stood up and recited this verse and said, 'When Allah wants men to give a heap of gold (by of the mahr), who are you to put ceiling on it?' Thus, according to the scripture, a woman can ask as much as a heap of gold by way of mahr. The Qur'an also warns men not to take anything away from their wives after gifting it to them. It says: 'And it is not lawful for you to take any part of what you have given them' (Surat Al-Baqarah:229).

It is usually asserted that mahr is a good security against divorce. However, in case the divorce takes place due to her own fault she gets no money. The woman is entitled to mahr even after her husband's death and the sons have to pay if it had not been paid during the life time of the husband. In case the woman dies, then her father and brothers can demand her mahr from the husband. This account paints a very bright picture of a woman's financial position. In reality, however, one finds that very few women actually gets this money (Ahmad, 1987: 318-319).

Amount of dower:

The amount of mahr may either be fixed or not if it is fixed, it can not be a sum less than the minimum laid down by the law.

Minimum Dower:

- Hanafi law-10 dirhams
- Maliki law-3 dirhams
- Shafi 'i law, - no fixed minimum
- Shiite law- no fixed minimum

The amount of dower differs from one place to another place. There is no fixed rule as to the maximum. In fact, the amount of dower depends on the social position of the parties and the conditions of society. There is no limit to the amount of dower- it may be to a very large amount considering the position and circumstances of the bridegroom, but is minimum is never less than ten dirhams. There is a percept of Prophet (PBUH), which expressly declares 'there is no dower under 10 dirhams.'

Both Sunni and Shia Schools regard excessive dower as improper though not illegal. But Indian Muslims have totally disregarded this direction. Amongst the Sunni Muslims of India the amount of dower is generally fixed at a very high rate. The dower may be fixed at

such a high rate that it may not be possible for the husband to pay the same during his life time. In such cases also the amount of dower shall be valid.

Ameer Ali says that amongst ordinary families the amount of dower is generally fixed from four to forty thousand rupees. In India, the amount of dower is generally fixed at a very high rate. This is the status symbol of the noble families. If a family is high in status and money, then definitely the amount of dower may be higher. In India dower is fixed at a high rate for rainy days of the wife. At the Shia law there is no fixed legal minimum for dower.

Ameer Ali says that although there is no limit to the maximum dower, it may not be supposed that the Muslim law does not keep in view those cases where the amount is exorbitant and is neither beyond the means of the husband or covers his entire property so as to exclude the rights of heirs. Under Shia school if no time is specified for the payment of dower or from reading kabinnama it can not be said whether dower is prompt or deferred, the whole dower shall be treated as deferred (Fyzee, 1949: 99-101).

Classification of Dower:

Dower is payable whether the sum has been fixed or not, Ali said: 'There can be no marriage without mahr'. Thus dower may be either specified or not specified. If the dower has been specified, then the question may be whether it is prompt (mu 'ajjal) or deferred (muwajjal, strictly mu'ajjal).

Thus we have two kinds of dower in Islam:

- Specified Dower (al-mahr al-musamma); and
- Unspecified Dower, or Proper Dower (mahr al mithl).

Specified Dower (mahr-i-musamma):

Generally the mahr is fixed at the time of marriage and the Qazi performing the ceremony enters the amount in the register; or there may be a regular contract called kabinama, with numerous conditions, it is known as specified dower. The sum may be fixed either before or at the time or even after the marriage.

A Muslim father has the power to make a contract for dower on behalf of his minor sons and the contract would be valid and binding even though it were made after the marriage; and the amount named in the contract must be paid irrespective of the husband's means. Under Hanafi Law minimum limit of specified dower is ten dirhams. Under Shia

Law no minimum has been fixed. Any thing which is not totally valueless can be fixed as dower. No maximum limit of the dower has been fixed either by Hanafi or Shia Law.

Unspecified Dower (mahr al-mithl):

If the amount of mahr is not specified the wife is entitled to proper dower or Mahr-al-Mithl. If the marriage was contracted with the condition that no dower shall be paid or wife shall not demand any dower, the condition being opposed to Muslim Law is ineffective and wife is entitled to proper dower. The Judicial Committee have said that, "Dower is an essential incident under the Mussalman Law to the status of marriage; to such an extent this is so that when it is unspecified at the time the marriage is contracted that law declares that it must be adjudged on definite principles."

The proper dower under Shia Law should not exceed 500 dirhams. 'Proper dower' varies according to social position of the woman's family, the wealth of her husband, her own personal qualifications, the circumstances of the time and the conditions of society surrounding her.

Prompt Dower:

A dower the payment of which may be postponed until demanded by the wife would be classed as prompt dower (Mahr-i-Muajjal). Prompt dower becomes due immediately after the marriage contract and husband is bound to pay it on demand from wife and she can realize it at any time before or after the consummation of marriage, if husband does not pay it she can refuse herself to him for cohabitation.

Diferred Dower:

Deferred dower (Mahr-i-Muwajjal) is payable on the dissolution of marriage, either by death or by divorce or on the expiration of the period fixed for the same at the time of the marriage. Dower which is not paid at once is described as deferred dower but it does not become 'prompt' merely because the wife demands it during the continuance of marriage. The liability to pay deferred dower binds the husband during his life time and his estate after his death. If the wife predeceases the husband the dower would become due at once and will not be postponed till death of the husband. If there is an agreement for payment of dower earlier than the dissolution of marriage such an agreement would be given effect to.

Increase or Decrease of Dower:

The husband may at any time after marriage increase the dower. Likewise, the wife may remit the dower, wholly or partially; and a Muslim girl who has attained puberty is competent to relinquish her mahr, although she may not have attained majority (18 years) within the meaning of the Indian Majority Act. The remission of the mahr by a wife is called hibat al-mahr or hiba-e mahr.

Mahr-An unsecured debt:

The dower of a Muslim wife in its nature is a debt like any other ordinary debt and she is entitled to have it satisfied along with other creditors. She however, is not a secured creditor and her right is not superior than other creditors. The only difference is that she has got right to retain the property till her debt is satisfied. Where however, there is no other outstanding debt at the time of husband's death his widow has a first charge on the property of the deceased so long as her dower debt is not paid off, even though she is an unsecured creditor.

Wife's claim for dower is simple money claim and she is not entitled to any charge on her husband's property, the parties are however competent to create such a charge by agreement. The court would not ordinarily create a charge on any property while passing a decree for dower because to pass such a decree is to give dower debt a priority over other debts due from the husband. The court can only pass a simple money decree. When the amount of dower becomes due and the husband in spite of demand refuse to pay it, the wife can enforce its payment in the following ways:

- By refusing to submit herself to her husband for conjugal relation.
- By instituting a suit for dower.
- By taking lawful possession of her husband's estate and retain it till dower is paid (Hussain, 1989: 227-228).

CHAPTER-3

DISSOLUTION OF MARRIAGE (DIVORCE)

- Concept
- Procedure for Divorce
- Kinds of Divorce
- Different Modes of Talaq

CHAPTER – III

Dissolution of Marriage (Divorce)

3.1 Concept:

Among all the nations of the institution of divorce existed as the natural corollary to the marital right, and this power was exclusively vested in the husband and the wife had no right to claim it. Under the Hebraic law, a husband could divorce his wife for any cause, and there were no checks on his arbitrary and capricious use of this power. Among the early Romans, the husband's right to repudiate the marital tie was as unrestricted as among the ancient Israelites. In few exceptional cases, both among the Arabs and Jews, the women of noble families, before marriage, reserved to themselves the power of divorcing their husbands (Ephroz, 2003:219-220).

But in India, in Hindu society, marriage is considered a sacramental union and sacramental union implies that it is a permanent union. According to Manu, husband and wife are united to each other not merely in this life, but even after death, in the next world. It is mentioned by sages that a widow who remains chaste reserves heaven after death. It means in Hindu society there did not exist the concept of dissolution of marriage. The Catholic Church also disapproves divorce. It may be submitted that talaq is an ancient institution and subject to the above exceptions all systems had accepted its utility in matrimonial relations. Islam reformed all the forms of divorce and gave it a new and perfect shape (Ephroz, 2003:219-220).

Under Islam, marriage is a contract in which both parties enjoy certain rights and shoulder certain responsibilities. Marriage is closely associated with life, the two are interdependent and their purpose is to ensure procreation and provide good conditions for raising children in harmonious homes. This is accepted from both a religious and a social point of view (Husni and Newman, 2007:68).

It is clear that it shall continue only as the two parties carry out the terms and condition of the contract. But if both or either of them fails to carry out the terms fulfill his/her duties towards each other, then the contract is broken. This is called 'talaq' or

'divorce'. Talaq is a means of dissolving the contract of marriage in abnormal circumstances. It is an unavoidable evil. The institution of divorce has been introduced to produce an alternative to mitigate hardships where for special reasons the continuance for matrimonial risks by remarriage as even by a subsequent divorce, if required. It is protective weapon for women against the tyranny of men. It is one of the legalized forms to enable marital and in turn familial disorganization (Qureshi, 1995:185).

Keeping these facts into consideration, all the religions of the world have recognized the institution. Thus, divorce as an institution is the final milestone in the process of freeing the women from slavery of man in marital relationship. It is a natural law that the dissatisfied couple should be separated from the marriage tie for the welfare of the household and society (Qureshi, 1995:185).

According to Islamic law, marriage is a contract and divorces a means of ending this contract whenever necessary. Divorce encompasses many religio-aspects and is considered necessary and lawful only if reconciliation between the spouses is absolutely not possible. The Holy Qur'an envisages marriage as a decent companionship which fulfills the noble purpose and commands the partners to take every measure to make a happy companionship on a concrete foundation (Qur'an) Yet on the other hand ,the holy Qur'an makes a realistic provision for divorce (Islam & modern Age. Vol xx, no 4, nov 1989, (Yasmeen & Shadbano, 1989:355).

Though divorce is the most detestable among all permitted things as the Prophet has described it as "The most detestable of all lawful things in the sight of God". From both Qur'an and Hadeeth, it is clear that divorce is disliked by God and his Prophet and it is a great sin to exercise the right of divorce without genuine reason. The holy Prophet is reported to have said – "never did Allah allow anything more hateful to him than divorce". But Islam takes a realistic view and makes provision for unexpected events for man's behavior is changeable and at times unpredictable. Islam does not recognize or accepted any marriage which is not functional or effective. There can be no nominal or idle marriage (Ajijola,1999:125)

Islam declares its policy that it can not tolerate unhappy, cold and stagnant marriages which are much more harmful than divorce. Marriage is binding only as long as it is functional and successful. Any system dealing with human nature has to be realistic and

moderate making allowances for all circumstances with preparedness to cope with all conditions otherwise it would be self-destructive and groundless. It is ordained: “but if their intention is firm for divorce, God heareth And knoweth all things.”

This verse of the Holy Qur'an lays down that Allah has the knowledge of the intention and He hears the secret things. It signifies that if a man is willing to divorce, it is better to be separated of doing ill treatment with his wife. As prescribed in the following passage of the Qur'an: “Retain them honorably or set them free honorably” (Q. 2:229). The Holy Book also forbade man in the strictest possible terms from inflicting harm on his wife by mistreating her as shown in this verse: “Do not retain them by force, to transgress; whoever does that has wronged himself. Take not God's sign in mockery.” (Q. 2:231) (Husni and Newman, 2007:68).

In the days of ignorance, the power to divorce was mainly concentrated in the male. An Arab was absolutely free to release himself from the matrimonial tie. The marriage agreement, either by capture, by purchase or by contrast, and its short lived duration, where by the man was lord and master, made the termination of the marriage easy. Divorce among the Arabs was mainly male oriented and in the days of Jahiliya a two fold method of divorce known as Talaq or dismissal or khul or separation was popularly practiced (Shaukat Ali, 1987:10).

An Arab had an absolute power in this connection and he was not required to assign reason for such exercise, nor was he bound to observe any procedure to the effect. The word commonly used for this purpose was talaq. It was at his discretion whether he would dissolve the marriage absolutely or gives a suspensory divorce, where he could take back his wife by resuming the marital connection. Sometimes an Arab would pronounce talaq ten times and take her back after sometime. The wife in such a situation was at the mercy of the husband and she was not at liberty to marry again (Ephroz, 2003:219).

This right of the husband to abandon the wife prevalent in practically all civilizations, Among the ancient civilization like the Jews, Athenians, Romans, where the right to divorce instead of abandon was exercised, the woman was powerless, for the right to divorce exclusively belonged to the husband. Prophet Mohammad (PBUH) introduced significant reforms to improve the status of women. He was the first to emancipate the status of women. Islam gave the right of divorce for both the husband and wife. He restrained the

power of divorce possessed by the husband. He also gives power to the women to divorce their husbands on reasonable grounds (Qureshi, 1995:187-188).

Therefore, Islam has given the right of divorce to men and women, but at the same time it has been made necessary that this right should be exercised only in exceptional cases, when no other way is left and all efforts to make peace between husband and wife have proved abortive (Ajijola, 1999:125).

The Prophet of Islam disapproved the act of divorce and regarded its practice as: 'Calculated to undermine the foundations of society'. He repeatedly declared that nothing pleased God more than emancipation of slaves and nothing more displeased Him than divorce, because it disturbed family life and interfered with proper bringing up of children. The custom of divorce however could not be abolished because it would have been inadvisable to continue the bond of marriage even in cases where mutual differences were totally irreconcilable (Qureshi, 1995:56).

Divorce as a last option:

Although divorce being allowed in Islam is a sign of the lenience and practical nature of Islamic legal system, keeping the unity of the family is considered a priority for the sake of the children. For this reason, divorce is always a last choice, after exhausting all possible means of reconciliation. For example, Allah addresses men asking them to try hard to keep the marriage, even if they dislike their wives: ".....live with them on a footing of kindness and equity. If ye take a dislike to them it may be that ye dislike a thing, and God brings about through it a great deal of good." (Surah 4 Verse 19)

Also the following verse is addressed to women asking them the same thing: "If a wife fears cruelty or desertion on her husband's part, there is no settlement between themselves; Surah 4 verse 128 (www.islamonline.net, laws of divorce).

Reconciliation:

The tradition clearly recommends that divorce should be resorted to only in case of extreme circumstances. A Muslim is required to face them and thus to dissolve only as a last and final resort. The Quran illustrates this point by expressing approval when the Prophet (PBUH) insisted that Hazrat Zayd should not divorce his wife Zaynab of the fact that there was a long standing dissention between the husband and wife. This can be seen from the Qur'anic injunction: 'Behold thou didst say to one who had received the grace of God and

thy favour: Retain thou (in wedlock) thy wife, and, fear God' (33:37). If a dispute has arisen between the husband and the wife and their living together as husband and wife is difficult in a situation the direction of Islam is that the decision to give divorce should not be taken immediately, but all efforts should be made for reconciliation between the two disputants, and if it becomes necessary, even to take suitable disciplinary action. The procedures to be adopted in this connection are given in the Qur'an are as under: 'As for those women from whom you fear defiance, admonish them, leave them alone in their beds and beat them (lightly). Then if they obey you, seek not an excuse against them. Verily Allah is Most High, Great.' (Surah An-4, sa-34)

In this verse three remedial measures have been directed to be adopted by the husband in the case of a disobeying or defiant wife. The first one is to admonish her that in such words to be spoken to her as would tempter mind and heart to accept the reformatory attempts. If this attempt fails then the second measure should be adopted, that is she should be isolated in her bed so that she should realize that her husband is unsuccessful, then the husband should raise his hand to hit her; but this hitting should not be to satisfy his anger, but with a view to disciplining and reforming her. It should be borne in mind that the husband should not hit her hard, but lightly. For beating the wife in an aggressive and tyrannical is strictly forbidden. In Hadith it is stated: 'Do not hit her face, Do not abuse and do not leave her alone except in the home'. (Abu Dawood). In another Hadith it is stated: 'Hit them but not in a way that would be hard and painful for them.' (Muslim)

In fact this authority has been given to a husband to keep his wife within the limits of morality and to maintain discipline in the house. It is not given for the purpose of allowing the husband to beat his wife on petty and flimsy grounds and for misusing it in any way he likes (www.islamawareness.net).

If even after the application of this third measure there is no sign of improvement and the tension may be increasing then there is one more measure to be tried as ordained and that measure is of appointing 'Hakam' (arbiters) and reaching conciliation through their efforts. To reconcile a couple's differences, the legislator instructed that two arbiters, one from each family sent lest there is discord between them and to increase the chance of agreement between them. The arbitration takes away the fear and restores peace to the couple, or identifies the guilty party, ensuring that latter does not overstep the mark any

more. The reason for influence the couple and make them return to their senses, as becomes clear from this verse: 'And if you fear a breach between the two, bring them forth an arbiter, if they desire to set things right; compose their differences' (Qur.4:35) (Husni and Newman,2007:67).

The very concept of arbitration is quite modern and this was stipulated 1400 years ago by the Holy Book of Islam. However it is highly regrettable that such a fair provision of the Qur'an is ignored by Muslims and they resort to triple divorce in one sitting which was part of pre-Islamic customary law (Engineer, 2001:11-12).

If the arbitrators cannot effect reconciliation and find fault on the part of the husband or on both sides, dissolution of the marriage may be decreed, if the fault is found on the part of the wife, khula may be decreed (Shaukat Ali, 1987:176).

If this effort also fails, divorce may be applied. The idea that that a Muslim husband can divorce his wife at will and when he likes is totally wrong and opposed to Islamic teaching because Islam has given full and equal rights to the women. She is not like a piece of household article which can be thrown away or sold, when it is not required (Ajijola, 1999:127-128).

A Muslim is not free to exercise the right of divorce on the 'slightest disgust'. The law has put many limitations upon the exercise of this power. A Muslim is permitted to have recourse to divorce provided that there is ample justification for such an extreme measure. The Qur'an expressly forbids a man to seek a pretext for divorcing his wife, so long as she remains faithful and obedient to him in matters recommended by the law: 'If women obey you (i.e. in lawful matters), then do not seek a way against them'. (4:34). That is, do not seek a pretext for separation.

The law gives man, primarily, the faculty of dissolving the marriage, if the wife by her indocility or her bad character, renders their married life unhappy. But in the absence of serious reasons, no Muslim can justify a divorce either in the eyes of religion or the law. If a man abandons his wife or puts her away from simple caprice, he draws upon himself the divine anger, for-'the curse of God', said the Prophet(PBUH), 'rests on him who repudiates his wife capriciously'(Galwash,2001:67-68).

Therefore, a divorce can be resorted to only when there is a strong, sufficient and genuine reason for it and when the two parties have tried all possible means to establish good relationship with each other but failed (Ajijola, 1999:127-128).

3.2 Procedure for Divorce:

If even the last measure proves to be ineffective and there appears to be no sign of reconciliation, then the husband can use his right of giving divorce; and it is better to free the wife from the bounds of nikah than keeping her suspended indefinitely. Since the Holy Prophet (PBUH) considered divorce as the 'most repugnant of all lawful things', certain conditions are prescribed for its pronouncement.

In the case of deciding to give divorce a husband should take care to adopt the Shariah method and it is better if he reduces this decision to writing. A divorce is allowed only if certain conditions are fulfilled:

- Divorce can not be given without a valid reason.
- The husband, if he asks for a divorce should pay the dower of the wife in full and if the divorce is demanded by the wife, she should argue to give up her claim of dower.
- Divorce should be given when the wife is in a 'state of purity' i.e., when she is clean after her menstrual period and the husband had not sexual intercourse with her. Giving divorce during the menstrual period of the wife has been forbidden in the Hadith. On the good grounds that during the menstrual period a husband are not attracted towards his wife and in her state of cleanliness thereafter he may turn towards her and may give up the idea of divorcing her.
- Divorce should be given in the presence of two witnesses. It is stated in Surah Talaq: "And call to witness two just men among you" (Surah-Al-Talaq-2) (www.islamawareness.net).
- The divorce must be given three different times not all at once.

There should be three divorces, each separated by long interval of time. A divorce given at one sitting does not have the effect of separating husband and wife. Some jurists are of the opinion that the three divorces can be given in one sitting and then the husband and the wife will have to part with each other.

But Imam Ahmad bin Hanbal and Imam Abu Taymiyya differ from this opinion and say that the three divorces must come at the end of a certain interval of time. This opinion is correct because there are strong reasons why three divorces at one sitting should not be allowed. The intention of the Holy Prophet (PBUH) in fixing three divorces separated by certain intervals of time was to leave the way open for reconciliation between husband and wife and give them an opportunity for patching up their quarrels. If the three divorces are given all at once at a single sitting this intention can not be fulfilled and the wife and the husband can not come together if they want to reconcile. So those jurists have made a great mistake who allow three divorces at a single sitting (Ajijola, 1999:130-132).

After the divorce, the woman will have to pass her term of waiting (Iddat). It is that period in which a divorced woman can not be re-marry and it is incumbent upon the husband that he should not turn her out before the end of this period of iddat, and he should provide for her maintenance during this time. Similarly it is incumbent upon the divorced woman that she should pass her period of iddat in her husband's house. The term of iddat is for three menstrual periods. The Qur'an states: "Divorced women shall wait, keeping themselves apart, for three menstrual periods." (Surah Baqarah-228). When the third menstrual period is over, the period of iddat ends. And if the woman is not menstruating, then the period of iddat is three lunar months that is from the day the divorce is given till the end of three lunar months. "And for such of your women as despair of menstruation, if you doubt, the second period (of waiting) shall be three months, and also for those who have it not" (Surah Al-Talaq-4). And if the woman is pregnant, then her period of waiting is the termination of her pregnancy (delivery): And for those with child, their period shall be till they bring forth their burden." (Surah, Al-Talaq-4).

- During the period of waiting (iddat) a husband can return to her, i.e. take her back as wife. For this revocation of divorce, two just men should be called as witnesses.
- If he has not returned to her or revoke the divorce, then after the period of waiting (iddat) is over, the woman would separate from the man. But this would be 'one revocable divorce'. If after this both the ex-husband and the ex-wife desire, they can re-marry. In other words after the period of iddat, man has no right of revocation, however if he wants to bring her back as a wife, there is an opportunity for him to marry her again with her willingness.

According to Qur'an and Sunnah this is the correct and better procedure of giving divorce. In this procedure man gets full opportunity to think and to weigh the pros and cons of his steps, and there remains little or no chance for him to regret. The jurists have termed such a divorce that has been given once and in state of cleanliness and without an intercourse after the last menstrual period, and no second and third divorce having been given during the period of waiting, but the period of iddat was allowed to pass after one divorce-as 'the divorce according to Sunnah'.

When the Second Divorce should be given:

The second divorce is to be given on some other occasion, that is if the husband had taken back the wife after giving one divorce, but in spite of efforts smooth relations did not prevail, then he can give the second divorce in the manner described in the above lines, after which the woman will have again to spend her period of waiting (iddat). During this period of waiting, the husband can, if he wishes, return to his wife, i.e. take her back as wife. And if the period of iddat is over, then he can re-marry her with her willingness.

The divorce in which the husband has the right to return to his wife or take her back as wife or to revoke his divorces are the first and second divorces, that is the divorce given on two occasions. In the Holy Qur'an as it is ordained:

"Divorce is to be given two times, and then (a woman) must be retained in good manner or released grace fully." (Surah Baqrah-229).

When can the Third Divorce be Given:

If after giving the second divorce, the husband has revoke his decision and taken her back, but in spite of efforts smooth relations did not prevail, and the husband wants to divorce her, then this time he should arrive at a decision with more careful consideration, because this is the divorce of the third occasion, in which the husband has neither the right of revocation, nor can he re-marry after the passing of the period of waiting unless the woman has re-married and has been divorced by the second husband.

The Holy Qur'an directs: "So if a husband divorces his wife (after two times) he cannot after that remarry her until after she has married another husband (and he has divorced her)." (Surah, Baqarah-230). The commands concerning this third divorce are very strict. And it is called 'Talaq -i-mughallazah Bainah'. The third divorce is not only 'baain' (separator) (irrevocable) but is so absolute that the man and the woman cannot re-marry

even with mutual agreement unless the woman is married to another man and this other man divorces her by his own free will, and not in accordance with a pre-planned understanding, or unless he dies. If this second husband divorces the woman perchance or he dies, and the woman wants to go back to her former husband, then she can remarry him.

The Wrong Way of Giving Divorce:

Generally people, being ignorant of the commands of the Shariah and being carried away by their emotion or rage, pronounce three divorces at one time, and then regret it. This method of giving divorce is against the Sunnah. Therefore, such divorces are called the 'divorce of bid'ah' (innovative). There are differences of opinion among the Ulema (scholars) on this point like what is the effect of pronouncing three divorces at one and the same time? Will it be counted as three divorces or only one? , therefore the safety lies in not pronouncing three divorces at one and the same time. Generally people are under the wrong impression that unless a husband pronounces three divorces, the divorce does not become effective, and some Qazis make it a point to write down three divorces in the divorce-document. But such a procedure is absolutely wrong and it is necessary that the matter should be reviewed and the needed reformation effected.

Carelessness of Muslims towards the Shariah Laws:

After laying down the commands concerning divorce in the Qur'an, it has been specifically mentioned: "Do not treat Allah's signs (commands) as jest." (Baqarah-231) "And these are the limits (imposed by) Allah, and whoever transgresses Allah's limits, he verily wrongs his soul." (Surah Al-Talaq-1) And in the concluding part of Surah Talaq, a warning of severe punishment is given to those who would disobey the Divine commands. In spite of these warnings, today the state of affairs among the Muslims is such that a very large number of them contravenes the Shariah Laws and one section of Muslims even openly ridicules the Shariah Laws, and is bent upon terminating their operation, although a Muslim has given a pledge to his Lord that he would lead his life according to the way shown by Him and would keep the banner of His religion and His Shariah high (www.islamawareness.net).

3.3 Kinds of Divorce

The contract of marriage under the Mohammedan law may be dissolved in any one of the following ways:

- by the husband at his will, without the intervention of a court;
- by mutual consent of the husband and wife, without the intervention of a court;
- by a judicial decree on the application of either party;

The wife cannot divorce herself from her husband without his consent, except under a contract whether made before or after marriage, but she may, in some cases, obtain a divorce by judicial decree. When the divorce proceeds from the husband, it is called talaq, when it is effected by mutual consent, it is called khula or mubara'at, according to the terms of the contract between the parties. (a divorce at the instance of the wife is legally termed khula, a dissolution by mutual consent of both is known as mubara'at) (Hidayatullah, 1990:258).

By the Husband

- **Talaq (Repudiation):** The word 'talaq' is usually rendered as 'repudiation', it comes a root (tallaqa) which means 'to release (an animal) from a tether, to repudiate the wife, or free her from the bondage of marriage. Under the Muslim Law, a husband has been given arbitrary power to dissolve his marriage. In law, it signifies the absolute power which the husband possesses of divorcing his wife at all times (Fyzee, 1949:150).

Before a divorce takes place as a final legal action, several conditions must be obtain, for the validity of talaq:

- **The husband must be major:** The main qualification for a person, who can pronounce talaq, is that he must be of sound mind and has attained puberty. According to Sunni School of Law in order to effect a valid repudiation the husband should have attained his majority. A talaq pronounced by a husband who is of 'mature age (baligh) and possessed by understanding (akil) is effective, whether he is free or a slave, willing or acting under compulsion and even though it was uttered in sport or jest or inadvertently by a mere slip of tongue. Shia law does not agree with this proposition, it says the most important thing in a divorce is intention. In Shia Law, four conditions are required of a person to pronounce a valid divorce.
 - that a husband should have attained majority

- that he should be possessed of sound understanding
- that he should act of his own free will and that he should have a definite intention to dissolve the marriage tie.

It is unanimously agreed by both Sunni and Shia school that neither minors nor their guardians acting on their behalf, have any power to pronounce a valid divorce (Shaukat Ali, 1987: 177).

Under the Maliki school, puberty is attained at the age of eighteenth years and under the Hanafi and Shia Schools, puberty is attained at the age of 15 years (Qureshi, 1995:191).

- **Insanity:** A divorce pronounced by an insane person is ineffective. However the guardian of the confirmed lunatic is qualified to pronounce the divorce on his behalf. When there is no guardian the Qazi or judge can make a decree to dissolve the tie. The reason is that lunacy is usually permanent and can affect a whole life (Shaukat Ali, 1987:178).
- **Talaq by a dumb person: (Its validity):** Under the Shia law, talaq can be pronounced by a dumb person by any signs sufficiently indicative of his purpose. According to Sunni law a legal by a dumb person will be valid if it was expressed in positive and intelligible signs (Qureshi, 1995:192).
- The husband must be free from external pressure. If he is forced to divorce his wife against his will and he under pressure, so pronounce her, the pronouncement is void, according to all schools of law except the Hanafi, whose position in this respect is regarded by other jurists to be clearly in compatible with the statements of the Prophet (PBUH).
- There must be a clear intention on his part to terminate the marriage. Some schools however accept as valid the divorce pronouncements of a jesting and thoughtless or forgetful husband.
- **Talaq by a drunker man:** He must be sane, conscious, alert and free excessive anger. If he acts while under the influence of intoxication, his divorce pronouncement is void, according to some jurists, valid according to other, provided the intoxicant is of the prohibited kinds and is used voluntarily (Abd Al'Ati, 1977:227).

Most Hanafi jurists generally regard divorce pronounced under intoxication as valid. Their views on the subject are varied and at times confusing. Muslim Law on the question of talaq under intoxication is complex and contrary. Under the Shia Law, a talaq in intoxication is not valid as the required understanding is necessary for the validity of talaq. Maliki agree with the Shias on this point.

The Hanafi further hold a divorce would be effective even though the husband is in ignorance of the meaning of the words he utters. The Hanabali and Shafeis do not hold such a divorce effective (Shaukat Ali, 1987:179-180).

- **Talaq with an option:** There exists a difference of opinion on the question of talaq with an option. The Shia School maintains that all talaqs to which an option or a condition is attached, are void. On the other hand Sunni School maintains that repudiation can not be qualified by option. .
- **Witnesses:** As regards the presence of witnesses at the time of pronouncing talaq, there is difference of opinion between Sunni and Shia Schools, Under Sunni School, no witness is necessary at the time of pronouncing talaq. Under the Shia School, witnesses are necessary for the validity of talaq, there must be at least two male witnesses who should hear the actual words. It is very much interesting to note under the Sunni Law that witnesses are necessary at the time of marriage but no witnesses is necessary at the time of talaq (Qureshi, 1995:194).

A talaq may be effected either orally or by written document talaqnama. Pronouncement of talaq may either be revocable (talaq-u-raja'i) or irrevocable (talaq-ul-ba'in). In revocable talaq, one does not dissolve the marriage until the period of iddat (seclusion) is over (Engineer, 2001:133).

3.4 Different Modes of Talaq

The procedures regarding talaq, khula, mubara'at and faskh are under debate not only among ancient scholars but continues to provoke modern scholars as well, consequently creating copious literature with divergent views. Moreover, the modes formerly adopted by several progressive Muslim courts of law the world over, are unfortunately not uniform, being streaked with much traditional heterogeneity, adapting and

developing legal notions of various schools and forwarding their own peculiar interpretations (Shaukat Ali,1987:197).

Talaq: Before entering into general discussion talaq with the various forms it has taken, it would be imperative at the outset to summarize a few cardinal aspects regarding it. Legally speaking the concept of talaq as evolved by jurists differs from the Western dissolution of marriage known as divorce, since it is essentially a procedure that can only be initiated by the husband, no consent being required of the wife. Besides, the exercise of talaq is extra-judicial and in no way subject to external check. Technically, the power of the husband to divorce is absolute (Shaukat Ali, 1987:197).

A talaq may be pronounced in number of forms. The Ahsan or Hasan forms, known as the Talaq-i-Sunnah, offer opportunities for re-establishing the status of marriage and are therefore Rajai (revocable). On the other hand, the Bidai or irregular forms can be implemented by a triple pronouncement or a single pronouncement, clearly indicating finality by the use of some expression, thus, terminating the relationship totally and is technically Bidai (irrevocable). Hence once such a pronouncement is made the status of marriage can not be re-established, except under certain conditions (Shaukat Ali, 1987:197).

Various Forms of Divorce: Talaqs are classified into two kinds:

- **talaq al-Sunnah**, i.e. talaqs which are in conformity with the dictates of the Prophet and,
- **Talaq-i-bid'at**, i.e., talaqs which are not in accord with Sunnah and are generally known as triple divorce.

Talaq al-Sunnah may be pronounced in two forms, ahsan or the most approved and hasan or the approved form (Serajuddin, 1999:200).

- **Ahsan Form or Single Revocable Divorce:**

This is considered to be the most laudable of all types of divorce. It consists of one single pronouncement within the term of purity. This is followed by the abstention from any kind of sexual intimacy between the spouses. The pronouncement leaves the wife to the observance of the probationary of “waiting period” of iddat. This period is of three months duration from the date of the pronouncement except in the case of pregnant wife. In that case the

waiting period is until after the birth of the baby (Yasmeen and Shadbano, Islam and Modern Age; Vol -20: Nov-1989:365-358).

This kind of divorce is revocable during the period of 'iddat. The single pronouncement does not dissolve the marriage completely. Divorce is revocable at any time during the period of 'iddat. This can be expressed in words or by conduct. If the husband cohabits with the wife during the period of 'iddat, the divorce is revoked under Hanafi law. At the expiry of the waiting period or 'iddat, the divorce becomes irrevocable and the wife becomes free to remarry someone else. She is entitled to maintenance during the period of 'iddat (Fyzee, 1974 pp.152-153)

This form of divorce is considered most laudable because the method is least injurious to women. The husband is obliged to keep wife in the same house or at least arrange for a comfortable residence for her. It is the responsibility of the husband to maintain the wife during the period of 'iddat. If the couple reconcile within this period nothing else is required than his initial revocation to facilitate the re-union. But after the term of 'iddat expires and no revocation takes place, the divorce become irrevocable. After this, the wife is free to marry someone else or she can reunite with her former husband. This marriage has to take place with all standard requisites of a new contract even if it is a reunion with her former husband. The Holy Prophet's companions chiefly esteemed this kind of divorce because it is less injurious to women and she remains lawful to her husband even after the expiry of waiting period. A husband can also take back his wife without any shame. Ahsan talaq is considered to be a check against the hasty pronouncement of divorce as it is pronounced during the time in which there is no restriction to conjugal intercourse. During 'iddat, divorce continues to be in suspense and there is still room for reconciliation. This form of divorce is accepted as legal by the Wahabi School. All the Sunni as well as the Shia Schools accept this form of divorce as being the most laudable or least disapproved form (Yasmeen and Shadbano, Islam and Modern Age; Vol -20: Nov-1989:365-357).

- **Hasan Form: or Triple Irrevocable Divorce:**

In this form of divorce a man must make three pronouncements during three consecutive terms of ritual purity. At the pronouncement of divorce for the third time, the divorce becomes final and irrevocable. The wife should be maintained by the husband during these successive months. She should be kept

in the same house or provided with a separate residence and the maintenance must be provided by the husband.

In this form of divorce, having made the first pronouncement of divorce, the husband must wait for the woman to recover from her next monthly menstrual course. During this period they must not cohabit. When the wife enters into a state of fresh purity, the second and third pronouncement may be made subsequent to the wife's recovery from her next two consecutive menstrual periods. If the husband decides not to reconcile then he must take the third and final pronouncement, which is irrevocable and marriage stands dissolved.

In this form there is chance for the parties to reconcile before the third pronouncement of divorce. After the third and final pronouncement, the wife cannot re-marry her former husband unless she marries another man and is lawfully divorced by her second husband after marriage is consummated. This difficult procedure is considered to have been prescribed by Hanafi School of jurisprudence only. In pre-Islamic times, the wife was divorced and taken back by the husband several times. The Prophet banned all such practices. There is provision for a husband to take back his wife but should do so before the third pronouncement of divorce (Yasmeen and Shadbano, *Islam and Modern Age*; Vol -2 0:Nov-1989:357-358).

Disapproved Form or Talaqul Bida:

The forms of divorce that are not made in accordance with the Sunnah procedure are considered talaq-al-bida and appear in the following forms:

- a. **The Triple Declaration:** Any divorce pronouncement which is not made in accordance with the Sunnah procedures, is considered contra-Sunnah, unprecedented or bid'i, or talaqul Bida i.e., an act of deviation in the disapproved direction. Although disapproved by the classical jurists, it has been validly accepted by most of the Sunni jurists, 'though in its commissioning the man incurs a sin. The Shiah and Malikis do not accept the validity of such a form of divorce (Abd al Ati, 1977:236).

In this form three pronouncements are made in a single tuhr, either in one sentence, eg. -'I divorce thee triply or thrice', or in three sentences, 'I divorce thee, I divorce thee, I divorce thee'. Such a talaq is lawful, although sinful, in Hanafi law; but in Ithna 'Ashari and the

Fatimid laws it is not permissible. This is called al-talaqal-ba'in, irrevocable divorce' (Fyzee, 1949:154).

It leaves no room for retraction, repentance or reconciliation. Remarriage of the couple is only possible if the wife lawfully marries another husband and this second husband lawfully divorces her after the marriage has been consummated. The remarriage of a couple after a proper interdoctrine of halalah is often misused as a fiction or device to legalize remarriage of the 'triple divorced wife' with her first husband without a confide intervening marriage. Aman who divorces his wife irrevocably by uttering triple talaq often does so in a mood of anger or provocation; and he often repents his hasty action .To wriggle out of this situation he arranges a marriage of convenience for his wife with a third party and a quick divorce and then remarries her. If the parties remarry without an intervening marriage of the wife with a third person, the marriage is void and the children of the marriage are illegitimate.

The Holi Qur'an lays down:

“So if a husband
Divorces his wife (irrevocably)
He cannot after that,
Remarry her until
After she has married
Another husband and
He has divorced her
In that case there is
No blame on either of them
If they re-Unite, provided
They feel that they can keep the limits
Ordain by God.....”

Triple oral talaq is debatable issue. Some interpreters are of the opinion that pronouncement of triple talaq in one sitting is a pre-Islamic practice. The Prophet (PBUH) was not happy with it as indicated by the Hadith. Once Prophet (PBUH) stood up in anger when he came to know that a person has divorced his wife by pronouncing a triple divorce

in one sitting. He even asked one of his disciples Abu Rukanah to take back his wife even after pronouncement of triple talaq in one sitting (Engineer, 2001:134-135).

The first Caliph Hazrat Abu Bakar also did not permit it and was prohibited until early period of Hazrat Umar, who enforced it again as a temporary measure in certain circumstances. Some scholars indicate Caliph Umar legitimized this form of divorce as an emergency measure. The reason for legitimizing this form of divorce by Caliph Umar seems to be restrictive rather than permissive. He held it permissible to impose a certain restriction on loose tendencies to divorce which had crept in during his regime. "Umar's object in making effective three divorces pronounced on one occasion was to warn to people that they would have to take the evil consequences of following an un-Islamic practice, the result was contrary to what he intended." Hence it became a general practice to pronounce divorce thrice on a single occasion, thus turning a revocable divorce into an irrevocable one (Shaukat Ali, 1987:200).

This mode was introduced by the Ommeyyad kings who had found the restraints imposed by the Prophet as interfering with their facility of talaq. By this way they have tried to find an escape from the strictness of law for the indulgence of their caprice (Qureshi, 1995: 219)

It is obvious that talaq-i-bid' is against the letter and spirit of the Qur'an and the Sunnah, thus it has rightly been described as a sinful form of divorce. Yet this form of divorce was accepted as valid by some jurists. (Serajuddin, 1999: 201).

Unfortunately at least in India triple divorce has become the most prevalent form of divorce among the Sunni, Hanafi and Shafi Muslims. India is a country where a larger number of Muslim population is the follower of Hanafi School, who accept the validity of a divorced in single breath, out of provocation jest and intoxication. In fact, triple divorce is un-Qur'anic and is rejected even by Hanbali and Ahl-e-Hadith among the Sunni Muslims and all Shiah sects as well. Triple divorce being unjust to women was not practiced during the Prophet's time and also during the time of the first Caliph Hazrat Abu bakr (RA) and for two and half years during the reign of second Caliph Hazrat Umar (RA). It was during the later part of his reign that triple divorce in one sitting was enforced again on account of its misuse by some Arabs. Triple divorce has never been a part of Islamic teachings. It was in fact part of Arab customary law. Even according to Shah Waliyullah, a great Islamic thinker

with a social vision of 18th century India, it is unfair to apply the Arab customary law to non-Arab people. Many Shariah provisions include some aspects of the Arab customary law prevailing in the pre-Islamic times (Engineer, 2001:12).

The practice of triple divorce is a constant target of criticisms because it is the only provision which attaches a great insecurity to the matrimonial life of a woman under the Muslim Personal Laws. The provision of triple divorce demolishes the sacred castle of matrimonial life within minutes. By this rash act of her husband the wife is a great loser as she is ruined financially, socially and emotionally. She is suspected and becomes a sign of interrogation in the eyes of the society, that she must have been responsible to provoke her husband to that extent, with the result that her social reputation is damaged, her conduct is suspected, which shakes the soul of a woman. Abolition of triple divorce on which there is no unanimity among Muslim will give great relief to Muslim women. Many men misuse it either to harass their wives or to divorce them most arbitrarily, leaving them in lurch. Hundreds of women are suffering today because of its validity fortunately it has been abolished in Pakistan and Bangladesh (Ephroz, 2003:274).

It is submitted that in the light of the social change in the society it is the duty of the court to see the interest of poor ladies. Prophet Mohammad (PBUH) clearly disapproved this form of talaq. Under such circumstances, this become the duty of Indian courts to see as to whether proper procedure was adopted by the husband in dissolving their marriages (Qureshi, 1995:220-221).

It was held that the Qur'an verses have been differently interpreted by the different schools. According to Hanafi School such type of divorce was permissible. It was also said that Hedaya, Fatawa-i-Alamgiri and Radd-ul-Mukhtar have recognized this form of talaq. It was also said that a talaq pronounced during menstrual period will be a valid talaq.

b. The Single, Irrevocable Declaration:

Pronouncement of divorce is made only once during the period of sexual purity of the wife. This form of divorce is disapproved by Hanafi law. Although Ila' and Zihar, these two forms of divorce are mentioned in the Shariat Act, 1937, sec.2, they are very rare in India and of no practical importance (Fyzee, 1949:162).

Tyabji in his book 'Muslim Law' maintains that under Hanafi (but not Shiite) law where the marriage has been consummated the pronouncement of a single talaq is valid,

though made at a time when the wife is in her menstruation, or after the husband has had intercourse with her since her last menstruation. This form of talaq, in fact is not recognized by the Muslim law and this form is against the Qur'anic injunction. The Qur'an clearly says that the husband shall not pronounce talaq when the wife is in her courses. The husband is also directed not to pronounce talaq unless she was passed through one period of menstruation after the last occasion when there was sexual intercourse between the parties.

Ila' (Vow of abstinence):

This is a type of irrevocable divorce; a husband takes vow of abstinence and swears not to have sexual relations with his wife from a maximum period of four months. If reconciliation is made during this period, the vow is invalid, but if no reconciliation is made and the term expires, the marriage becomes irrevocably dissolved (Engineer, 2001:135).

The husband may revoke the oath by resumption of marital life. After the expiry of the period of four months in Hanafi law the marriage is dissolved without legal process but in Ithna 'Ashari and Shafi'i law, where legal proceedings are necessary. This form is obsolete in India and apparently there is no case law on the subject.

Zihar:

This form of divorce was commonly during pre-Islamic periods when a man significantly said to his wife 'thou art to be the back of my mother' (Quran-xxx3:1-4). As soon as these words were spoken, relation between husband and wife ended as if by divorce, the wife was not free to leave her husband's house. She continued to live in the same house but was treated as deserted wife because conjugal relations had ended (Yasmeen and Shadbano, Islam and Modern Age; Vol -2 0:Nov-1989:359).

If husband intends to revoke this declaration, he has to pay money by way of expiation, or fast for a certain period. After the oath has been taken, the wife has the right to go to the court and obtain divorce or restitution of conjugal rights on expiation. 'Zihar', says Tyabji, has hardly any significance so far as the law courts in India are concerned. The words do not come naturally to Indian Muslims (Fyzee, 1949:162).

By the Wife:

Apart from these, Islamic law bestows special rights to women to seek dissolution of marriage:

- **Talaq-e-tafwid (delegated divorce):**

The husband in Muhammadan law has the power to delegate his own right of pronouncing divorce to some third person or to the wife herself. A stipulation that under certain specified conditions, the wife can pronounce divorce upon herself has been held to be valid, provided first that the option is not absolute and unconditional and secondly that the condition are reasonable and not opposed to public policy. The words by which Tafwid (generally mis-spelt 'tafweez) is affected are there:

- c. Ikhtiyar (giving the choice)
- d. Amar-bil-yad (putting her business in her hand) and
- e. Mashiat (giving her the power to do so as she pleases)

An antenuptial agreement by a Muslim husband in a Kabin-nama that he would pay separate maintenance to his wife in case of disagreement that the wife should have the power to divorce herself in case of failure to pay maintenance for a certain period is not opposed to public policy is enforceable under the Muhammadan law (Fyzee, 1949: 159).

The provision of talaq-e tafwiz has provided a great relief and security to the Muslim women and the most potent weapon in the hands of a Muslim wife to obtain her freedom without the intervention of any court and is now beginning to be fairly common in India. Under this provision, the Kabinama to protect her matrimonial rights. And the husband delegates her the right to dissolve the marriage at the event of happening the stipulated conditions. The wife is entitled to stipulation the following conditions in the kabinama (Ephroz, 2003:225).

Moreover, a man may marry a wife on the condition that her business would remain in her hand, it is valid. A person marries a wife on the conditions that if he drinks wine, indulges in zina, gambling or beats her without reason, her business would be in her hand. But if husband said that he had beaten her because of her misconduct, the statement of the husband would be relied. It is invalid condition specified in the kabinama that when the whereabouts of the husband were not known for a long time, or where the husband had not provided maintenance up to a stipulated period, the business of the wife would be in her hands (Ephroz, 2003:226).

It may be pointed out that though the husband has delegated his right to divorce to the wife under the head of talaq-e-tafwiz but it is established that the right to dissolve the marriage through talaq-e-tafwiz is not an absolute right of the wife, but the nature of its exercise depends on the will of the husband. She can not exceed the limit which has been delegated to her neither in terms of time nor pronouncements. So this right of the wife is concessional, conditional, restricted and based on the will of the husband (Ephroz, 2003:226-227).

Divorce by a Common Consent:

Dissolution of marriage by common consent of the spouses is a peculiar feature of Islamic law. Prior to Islam, the wife had practically no right to ask for divorce, it was the Qur'anic legislation which provided for this form of relief (Fyzee, 1949:183).

Khul' and Mubara'a:

Islam has also given a right to Muslim women to divorce which is known as khula. The term khula is defined by the author of Darrul Mukhtar as 'the removal of matrimonial bonds'. It would deprive the wife of her right to dower, so much so if the wife is in possession of the consideration for the khula, she would have to return it to husband. Though this word khula has not been used in the holy Qur'an, a woman according to it can buy her freedom from her husband giving fidyah i.e. compensation. And this right is absolute. Thus the Qur'an says:

'Then if you fear that they can not keep within the limits of Allah, there is no blame on them for what she gives up to become free there by.'(2:229) (Engineer, 2001:12).

Commenting on this verse, Maulana Muhammad Ali says, these words give the wife the right to claim a divorce. It is one of the distinguishing characteristics of Islam that it gives the wife the right to claim a divorce, if she is willing to forgo the whole or part of her dowry'. (Holy Quran; Lahore, 1973, p.98). The Holy Prophet (PBUH) enforced this right in the case of Jamilah, who wanted to free herself from her husband though she found no fault in his behaviour towards her except that she did not like him. According to Sahih Bukhari the Prophet (PBUH) allowed her khula by returning the orchards which her husband had given her by way of mahr. But unfortunately the orthodox 'ulama deprive the women of this right also by insisting on the consent of her husband. This approach is not in keeping with the Sunnah of the Prophet (PBUH). However, whereas a woman can initiate divorce, khula

can be granted only with the consent of the husband. Her right to khula should be absolute particularly, when they fear they can not keep within the limits of Allah, i.e., they can not fulfill the marital obligations (Engineer,2001:12-13).

There is also a form of divorce what is called mubara'at, means mutual release. A mubara'at divorce like khula, is a dissolution of marriage by agreement, but there is a difference between the origin of the two. When the aversion is on the side of the wife, and she desires a separation, the transaction is called 'khula'. When the aversion is mutual, and both the sides desire a separation, the transaction is called 'mubara'at'. The offer in a mubara'at divorce may proceed from the wife or it may proceed from the husband, but once it is accepted, the dissolution is complete, and it operates as a talaq- i- bain as in the case of khula (Hidayatullah, 1990:265).

Unfortunately the 'ulama have equated khula' with mubara'at which is not correct. The Muslim Personal Law as it operates in India also does not grant the women right to khula without her husband's consent and naturally husband more often than not exploit this for harassing her and also for extracting much high compensation than is justified (Engineer,2001:13).

As a talaq, so in khula and mubara'at, the wife is bound to observe the iddat, khul' and mubarat operate as a single, irrevocable divorce. Therefore marital life can not be resumed by more reconciliation; a formal remarriage is necessary .Unless it is otherwise provided by the contract, a divorce effected by khula or mubara'at operates as a release by the wife of her dower, but it does not affect the liability of the husband to maintain her during her iddat or to maintain his children by her. The law of khul' and mubara'at has, within the course of the last few years, assumed a great deal of importance in India (Hidayatullah, 1990:266).

According to Hanafi law, the husband proposes dissolution and the wife accepts it at the same meeting. The proposal and acceptance need not be in any particular form. The contract itself dissolves the marriage and operates as a single talaq-e-bain , and its operation is not postponed until the execution of the khul'-nama (document of release). In Ithna Ashari law, as is to be expected, certain forms are to be strictly followed and witnesses are required.

As a general rule, in khul' the wife makes some compensation to the husband or give up a portion of her mahr; but this is not necessary. The Egyptian code of Hanafi law,

Art.275, based upon the classical authorities, lays down: 'A khul' repudiation can validly take place before or after consummation of the marriage, and without payment of compensation by the wife'. The true position is that once common consent is proved and the dissolution has been effected, the question of releasing the mahr or making compensation is a question of fact to be determined with reference to each particular case, and there is no general presumption that the husband has been released of his obligation to pay dower.

Tyabji has shown that jurists of authority differ on this question:

1. Abu Hanifa holds that, in the absence of agreement, mahr is deemed to be relinquished by the wife both by khul' and by mubara'at;
2. Abu Yusuf lays down that mahr is deemed to be relinquished by mubara'at, but not by khul;and
3. Imam Muhammad holds that mahr is deemed to be relinquished neither by khul' nor by mubara'at.

Where the Hanafi jurists of authority differ, it is the duty of the court to consider the matter for itself and to arrive at a just decision. The whole procedure of khul' and mubara'at depends upon consent and understanding, and it is submitted that the court would not be justified in making a presumption one way or the other. Each case is to be determined with reference to its facts; and where there is no agreement as to consideration, it would be proper for the court to award the mahr, or part of it, to the wife, if it is just and convenient to do so, but not otherwise (Fyzee, 1949:164-165).

Dissolution by Judicial Process:

In this category, the dissolution of marriage takes place by the ruling of some judicial agency, with or without the parties' consent. In this case, termination of the marital relationship is not the private concern of the principals; rather it implicates the judicial as well as the executive authorities. This situation obtains mainly in the case of li'an, double testimony or mutual imprecation, and annulment, in which a marriage contract is found void or incomplete and must be annulled (Abd Al' Ati, 1997: 244).

Grounds of Dissolution Recognized by Mohammedan Law:

The wife is entitled to a divorce for the dissolution of her marriage on any other ground which is recognized as valid for the dissolution of marriages under Muslim law. Incompatibility of temperaments and hatred of wife for her husband are not recognized by

Muslim law as grounds of divorce. Where as the wife sues for dissolution on the ground of li'an, the marriage cannot be dissolved if the husband bonafide retracts the charge of adultery (hidayatullah, 1990: 264).

a. Li'an (Mutual Imprecation):

Divorce by imprecation is mentioned in the Koran and is supported by the traditions of the Prophet. It is reported that a man from the Ansar accused his wife of adultery. The Prophet (PBUH) there upon asked them both to take an oath; then he ordered them to be separated from each other. When a man accuses his wife of adultery, but has no witnesses other than himself, he must testify by God four times that he is truthful and a fifth time that the curse of God shall be upon him, if he should be of the liars. To avert chastisement, she shall testify by God four times that he is of the liars, and a fifth time that the wrath of God shall be upon her, if he should be of the truthful. At this point, the marriage becomes dissolved and absolutely irrevocable, they could not be expected to live peaceably together after having reached such extremities (Abd Al' Ati, 1997:239).

The wife is entitled to sue for a divorce on the ground that her husband has falsely charged her with adultery. She must file a regular suit for dissolution of her marriage as a mere application to the Court is not the proper procedure. If the charges is proved to be false, she is entitled to a decree, but not if it is proved to be true. It is to be observed that mere allegation or oath, in the form of an anathema, does not dissolve the marriage. A Qazi must intervene, in Indian law, a regular suit has to be filed (Hidayatullah, 1990:273).

Under the pure Mahomedan law, if a man charges his wife with adultery, he may be called upon, on the application of the wife, either to retract the charge or to confirm it by oath. The husband had to be given every opportunity to retract the charge as the offence of making a false accusation of adultery was severely punishable. But now there is no obligation on the Court in India to give the husband an opportunity to retract the charge. The original rules were mere rules of evidence and they have been superseded by the Indian Evidence Act, 1872 (Hidayatullah, 1990:274).

The retraction must be honest and straight forward. A statement in the following terms 'The petitioner withdraws the charge made by him against his wife in proceedings under section 498 Indian Penal Code under section 240 of Mulla's Mahomedan law', does

not amount to an expression of the withdrawal of the accusation of adultery and to a vindication of the honor of the wife (Hidayatullah, 1990:274).

The High Court of Bombay has laid down that three conditions are necessary for a valid retraction:

- The husband admit that he has made a charge of adultery against the wife;
- He must admit that the charge was false, and
- He must make the retraction before the end of the trial but, even after the passing of the Dissolution of Muslim Marriages Act, VIII of 1939, the husband's retraction non-suits the aggrieved wife.

The essence of li'an is the persistence by the husband in an unproved allegation of unchastity on the part of the wife. If the infidelity is proved, the wife's action for dissolution fails (Fyzee, 1949: 167-168).

b. Faskh(Judicial Rescission):

The faskh is an Arabic word which means cancellation, rescission, revocation, abrogation, annulment. It comes from a root which means 'to annul (a deed)' or 'to rescind (a bargain)'. Hence it refers to the power of the Muslim Qazi to annul a marriage on the application of the wife. It may be defined as 'The dissolution or rescission of the contract of marriage by judicial decree'. A distinguished Muslim Jurist Mr. Tyabji in his book entitled 'The Muslim Law' says that Faskh means cancellation of marriage on account of physical defects in the husband or wife. He further says that faskh means dissolution of marriage by Courts (Fyzee, 1949: 168).

The law of faskh is founded upon this Qur'anic injunction and tradition of the Prophet (PBUH) like the one cited by Ameer Ali, 'the power of Qazi or judge to pronounce a divorce is founded on the express words of the Prophet (PBUH):

'If a woman be prejudiced by a marriage, let it be broken off'.

The classical jurists, however, differed in their opinions and in the course of centuries the schools of Islamic law held widely divergent views regarding the interpretation of the basic texts. While it was conceded that it was possible for the wife to obtain dissolution, the schools could not agree either as to the grounds of dissolution or as to the procedure to be followed. Elsewhere it has been shown on a comparison of the different schools, that in this respect the Maliki school is most favorable to woman; the Shafi'I and

Hanabali come next ;the Hanafi ,Ithna ‘ Ashari and Fatimid are the least favorable to them. Now Dissolution of Muslim Marriage Act, VIII of 1939 is applicable to all Muslims in India, regardless of the school or sub-school to which they belong (Fyzee, 1949: 168-169).

Divorce under the Dissolution of Muslim Marriage Act, 1939:

Before the passing of the Dissolution of Muslim Marriage Act, 1939, there was no piece of legislation under which a Muslim lady could ask for the dissolution of her marriage. Muslim ladies could only apply for the dissolution of their marriages under the doctrine of faskh. There existed no unanimity between different schools of Muslim law on the question of dissolution of marriage at the instance of wife. The schools were also not clear on the question of the procedure to be followed.

There is no provision in the Hanafi Code of Muslim Law enabling a married Muslim women to obtain a decree from the courts dissolving her marriage in case the husband neglects to maintain her, makes her life miserable by deserting or persistently maltreating her on certain other circumstances. The absence of such a provision has entailed unspeakable misery to innumerable Muslim women in British India. The Hanafi Jurists, however, have clearly laid down that in cases in which the application of Hanafi Law causes hardship, it is permissible to apply the provision of the Maliki , Shafi’I or Hanabali Law’(Fyzee, 1949: 167).

For a long time, the Qur’anic provisions for women were not recognized by Indian Muslim as well as by Indian Courts. Consequently the Muslim Wives suffered untold hardships. This was the position not only in India but in the whole Muslim world, the position of women were pitiable. There arose a movement in the Muslim world to provide statutory provision for the termination of marriage tie at the instance of the wife. In India, looking to the difficulty faced by the Muslim women, the Bhopal State passed an act in the year 1931. By this act women were allowed to free themselves from the marriage (Qureshi, 1995: 263).

After a great deal of public agitation Qazi Muhammad Ahmad Kazmi introduced a Bill in the Central Legislature on 17 April 1936. Ultimately, the bill was passed by the Assembly with suitable modifications and became law on 17 March 1939, as the Dissolution of Muslim Marriages Act, VIII of 1939, and ever since it has been hailed as one of the most progressive enactment passed by legislature within recent years. It restored to Muslim

women an important right accorded to them by Shari'at and it treated all Muslims alike. The Act therefore applies to every Muslim, to whatever school of law he belongs (Fyzee, 1949: 169).

The Dissolution of Muslim marriage Act, 1939, provides the various grounds enabling the wife to seek divorce from her husband:

In all schools of Islamic jurisprudence, the right of divorce can be exercised by both man and woman. The wife is entitled to initiate and claim dissolution of her marriage whereas the husband can pronounce divorce. According to one interpretation, the consent of her husband for seeking separation not required but she must claim divorce before a Qazi. If the wife has valid reasons for divorce or if she has been betrayed, she may initiate and obtain divorce through judicial processes. Or if she has genuine reasons, the consent of the husband is immaterial. In such a case, it is the duty of the Qazi to help her in gaining her freedom and from the marital bond (Hanafi Law).

Quran and Hadith give preference to divorce by mutual consent. Islam does not recognize a marriage that is not functional and effective. It demands a successful or no marriage at all. If the marriage does not serve its objectives effectively, it may be terminated by divorce with conservation of all rights of both the parties. (Abdalati, 1975: 181-82).

Islam commands the marital partners to live in kindness or to part with decency and kindness. It also ordains them to exert maximum efforts to make the marriage successful and to do everything that reduce the inconveniences of marriage dissolution (Quran XXIV : 32).

Some of the major reasons for seeking divorce are husband's inability to provide for the wife, severe poverty, long absence of husband or long imprisonment and impotency, cruelty and insanity, etc. In these circumstances if a wife desires, she may seek a legal release from her husband. The other reasons in which each party can seek a divorce are serious and chronic diseases, desertion and insanity, false marriage contract and mistreatment. The reasons under which a wife may seek divorce are discussed below:

Missing Husband

If the husband absconds for an abnormally long period of time and his whereabouts are not known, the wife is entitled to dissolve her marriage. According to Islamic law, the period of a husband's absence without any information of his whereabouts should be at least four years. However the subject regarding the right of a wife to dissolve the marriage under

the circumstances is rather controversial. According to Hanafi law, the period prescribe is 120 years. According to Maliki law, the matter is to be decided by the judge. If the judge could pronounce the separation at the expiry of four years, the wife is required to observe iddat for four months and ten days, and thereafter she is free to re-marry.

Failure to maintain

According to the Hanafi law, the inability to provide maintenance for a wife is not a reason for marriage dissolution. But it is the absolute duty of the husband to maintain the wife, even if she has the means to maintain herself and the husband.

Imprisonment of husband

In Islamic law, if the husband is sentenced to imprisonment for seven years or more, the wife is not entitled for the dissolution of marriage if she receives her proper maintenance during the period of his imprisonment. However, in Shafii law, the wife has the right to demand the dissolution of marriage on this basis.

Breach of Marital Obligations

If the husband is unable to perform his marital obligations without any reasonable cause the wife can seek divorce. These obligations include: maintenance, equality among wives, sexual gratification of dower etc. (Verma, 1971: 262-63).

Impotency

According to Islamic law, if the husband is impotent at the time of marriage and the wife was ignorant of this fact at the time of marriage she can obtain a divorce. Even if the wife knows of her husband's impotency she has a right to initiate divorce. The Hanafi law entitles the wife for a divorce if the impotency of the husband is proved (Fyzee, 1974: 173).

Insanity and other Diseases or Physical/Physiological Deficiencies

According to some interpreters of Islamic law, the wife can obtain a divorce if the husband is insane for 2 years. But according to Hanafi law a wife cannot obtain divorce on the basis of her husband's insanity. (Verma, 1971: 270-71).

In respect of other diseases like leprosy, venereal diseases etc. Hanafi law does not entitle the wife to secure separation. According to Shafii law the husband can dissolve marriage if the wife is suffering from any such disease but a wife cannot separation on this account (Verma: 270-71).

Option of Puberty

If a girl is below fifteen years of age at the time of marriage, and marriage is performed by father or grand-father, the girl has the right to repudiate the marriage after she attains the age of eighteen years. But under these circumstances the marriage should not have been consummated. She can, however, seek divorce after she attains the age of eighteen years even if the marriage has been consummated. A virgin who has reached the age of puberty and is of a sound mind can be given in marriage with or without her consent. According to Hanafi law marriage before puberty is lawful but should not be consummated. A girl after attaining puberty can repudiate marriage (Levy, 1958: 96-110).

Cruelty

If the husband habitually assaults the wife and maltreats his wife she is entitled to sue the husband for divorce. Apart from this if the husband, having more than one wife, does not treat the wives equally or commits adultery or forces his wife to lead an immoral life or does not allow her to exercise her legal right over her property etc., a wife can seek divorce on these grounds.

It must be specifically stated here, that while women are allowed to seek dissolution of marriage on the various grounds stated above, no specific grounds are prescribed for men seeking divorce. In fact, conflicting interpretation in this regard are forwarded by the leading interpreters of the Qur'anic injunctions. Maulvi Muhammad Ali, a noted commentator on the Holy Qur'an has pointed out that the Islamic law of divorce as dealt with, in the Holy Qur'an, confers the right on women to claim divorce without stating any specific reason. He cites the case of Jameelah, wife of Sabit bin Qais. In this case, the wife was dissatisfied with the marriage even though she found no fault (either moral or religious) with her husband. "She simply hated him". The Holy Prophet (PBUH) allowed her to claim her divorce if she could return the gardens and dowry gifted by her husband. Thus Jameelah was allowed to claim a divorce for no reason other than incompatibility. Such a precedence reported by Ali (1917) to be cited as Hadith, leads us to conclude that a woman's claim for divorce either for no particular reason or on grounds for ill-treatment etc. can also be enforced. Technically, this claim to divorce by the wife is called khula. It may be noted that a woman seeking khula, must make the claim to the Qazi, who after considering her arguments may or may not grant khula. Contrarily, a man can divorce his wife by pronouncing divorce in the

manner prescribed in the Holy Qur'an (Qur'an-II: 229,298,299). He neither has to present his case to the Qazi nor he needs to give any reason for divorce.

After the divorce is completed both man and woman are free from the marriage bonds and have the freedom to remarry. Men and women are not expected to remain in loneliness for the rest of their lives. It provides men and women both to take a second chance and try to settle in peace. They expected to refrain from committing the same mistakes when they remarry (Yasmeen and Shadbano, Islam and Modern Age; Vol -20: Nov-1989:359-363).

CHAPTER-4

CHANGING PATTERNS OF MUSLIM FAMILY IN INDIA

- Spread of Education
- Transition from Joint Family Structure to Nuclear Family Structure
- Neo-local Residence
- Changing Stratus of Muslim Women (Economic Perspective)
- Polygamy and Evil Practice
- The Purdah System

Chapter – IV

Changing Patterns of Muslim Family in India

In India the family is the most important institution that has survived through the ages. India, like most other less industrialized, traditional, eastern societies is a collectivist society that emphasizes family integrity, family loyalty. The Indian family has been a dominant institution in the life of the individual and in the life of the community. In India, families adhere to a patriarchal ideology, follow the patrilineal rule of descent, and endorse traditional gender role preferences. The Indian family is considered strong, stable, close, resilient, and enduring. Historically, the traditional, ideal and desired family in India is the joint family. A joint family includes kinsmen, and generally includes three to four living generations, including uncles, aunts, nieces, nephews, and grandparents living together in the same household. It is a group composed of a number of family units living in separate rooms of the same house. These members eat the food cooked at one hearth, share a common income, common property, are related to one another through kinship ties, and worship the same idols. The family supports the old; takes care of widows, never-married adults, and the disabled; assists during periods of unemployment; and provides security and a sense of support and togetherness. The joint family has always been the preferred family type in the Indian culture, and most Indians at some point in their lives have participated in joint family living (www.pathways.in/admission).

The family in Islam is a unit in which a man and woman unite to share life together according to the rules and regulations laid down by the *Shari'ah*. The traditional family structure based on segregation, with specific roles and responsibilities for men and women; these roles were always conceived of within the framework of the extended family and its interests, rather than the interest of the two persons directly involved. The traditional family set-up governed by a rigid social code wherein women are regarded as having a subordinate role to men. But With the advent of industrial civilization and with the advancement of technology, new factors of social transformation began to accumulate, which were potent enough to cause devastating social changes and in time shattered many of the old foundations of family life. The old size of the family has almost vanished.

The changes propelled by industrialization, urbanization have affected women and the family. Thus the *pardah* system is on its way out; women's right to property is protected by law, female literacy and education have considerably increased and, owing predominantly to technological innovations among the upper and middle classes, wives are becoming free from the drudgery of the home, can divorce like their male counterparts and even reduce the number of children under their care mostly through family planning. The children also are ordinarily better educated than their parents and sometimes occupy higher positions in industry whereby paternal authority is becoming weaker and the patriarchal joint family is disintegrating (Gisbert, 1972: 274).

Urbanization is a condition precedent to the adaptation of new patterns of behavior, and this holds good for both men and women. More important changes appear in between the present and future families of this generation in the role of the Muslim women, conjugal relations and child guidance in particular in the urban family setting.

One of the sectors where the effects of the education-industry are more evidence, concerns the position of women and their role in the family and society. Earlier in the Muslim family, the man is charged with the duty of being the leader of the family and the woman is assigned the duty of looking after the household. Muslim women are mostly confined in homes with full responsibility to carry out the domestic duties as good wives as wise mother. Women cared for the children and the house, preparing food and clothing. This division of labour was a pure and simple outgrowth of nature. Amongst various reasons of women's low social position, the major ones are poor economic condition, social-cultural pattern of the society, negative attitude towards education and overall backwardness of the Muslims society.

4.1. Spread of education:

In recent years, there has been a changing trend towards traditional status of the Muslim women throughout the globe owing to spread of education, slackening of patriarchal rigidity, dynamic political system and growth of women's organization. Changes in the division of work were noticed only when modern large scale industry emerged on the scene and when participation of women in production in large numbers became possible. Then they were no longer restricted to housework (Chaturvedi, 2004: 197)

Change in the position of women and the Muslim family is becoming more of a reality every day. While the *purdah* system is fading into oblivion, and the women's right to property is protected by the law, the educational system has opened its doors to them in terms of theoretical equality with men without distinction of caste, race or religion. In spite of chronic unemployment in the country, they are occupying manual, clerical as well as professional posts, often successfully competing with their male counterparts even for high political posts. While concessions to modernity have raised the age of marriage, increased educational levels and extended available career opportunities for women. If we outline broadly the changes that are taking place in the lives of Muslim women, we encounter the following trends: postponement of marriage; a greater freedom of choice in attending lectures, entertainments, and the formation of women's clubs and a large liberty in the use of the veil and in the ever-going demand for higher education (Lateef, 1990: 125-127).

4.2. Transition from Joint Family Structure to Nuclear Family Structure:

Another result of the impact of industrialization and urbanization in the family is the transition from the joint family structure to that of the individual or nuclear family. Since time immemorial the joint family has been one of the salient features of the Indian society. But the twentieth century brought enormous changes in the family system. Changes in the traditional family system have been so enormous that it is steadily on the wane from the urban scene.

With the advent of urbanization and modernization, younger generations are turning away from the joint family form. However this does not mean that the joint family system is vanishing in India. In fact, new types of joint families are emerging. Some scholars specify that the *modified extended family* has replaced the traditional joint family. In villages the size of joint family has been substantially reduced or is found in its fragmented form. Some have split into several nuclear families, while others have taken the form of extended or stem families. Extended family is in fact a transitory phase between joint and nuclear family system. This new family form encourages frequent visits; financial assistance; aid and support in childcare and household chores; and involvement and participation in life-cycle events such as births, marriages, deaths, and festival celebrations. The familial and kinship bonds are thus maintained and sustained. It is true that some well- to- do families, even

when residing in the city, keep their connection with their families of origin rooted in the village. But such is not the case with the working class or middle class families. In spite of the numerous changes and adaptations to a pseudo-Western culture and a move toward the nuclear family among the middle and upper classes, the modified extended family is preferred and continues to prevail in modern India (www.pathways.in/admission).

In a joint family, males were also subject to control by the head of the family and were not always free to support their wives financially or in a bid for independence. The increase in the number of nuclear families due to urbanization has helped to make marriage more of a relationship between two persons, involving the rest of the family much less. Family ties are still strong, and still exercise considerable control over choice of marriage partner. There is a definite trend towards smaller families. This is particularly true of the urban middle class as well as educated poor in the rural areas (Lateef, 1990: 127).

4.3. Neo-local Residence:

After marriage, children may live for some time with their parents but soon they prefer to live separately. As urbanization and industrialization proceed, more and more young married couples and their families find their residence being determined by the location of their jobs. Neo-local residence is therefore becoming more common. Treating spouses and other members of the family on the basis of equality, is part of a larger ideological change. As such, patriarch or parents in the family no longer try to impose their authority on the children but give them more freedom now to determine their own goals and means to achieve them. The worth of the individual is recognized and his/her wishes are now considered more important in the new family (Ahuja, 2004: 45-46).

The fundamental change that was noticed was that the men and women both preferred marriage by choice. Due to modernization and the influence of Western culture, arranged marriages are becoming less popular and common, especially in metropolitan cities. Today men and women seem to have a little more control on the choice of their spouses than earlier generations. Contrary to the former customs, it is now very rare, especially among middle classes, for a marriage to be contracted without the two partners being already acquainted at least by sight. It has become usual for them to get to know and visit each other, and become engaged as in the West. In the traditional Muslim family, the

marriages for the children were arranged by parents without consulting them. In its place, marriages based on the couple's choice, often crossing caste and/or religious boundaries, are becoming more common, and in the transitional family, the parents and children jointly make selection of the spouses (Abraham, 2006: 164).

4.4. Changing Status of Muslim Women (Economic Perspective):

More and more Muslim women are entering in the labour force. This has several consequences for the family. The traditional picture of women is very different than what it is today. Generally it is the Muslim men that earn for the family. Now there are women who control and own giant financial interests. Many Muslim women have become earners in the present age. Some of them who possess high academic qualifications earn even higher salaries than their husbands. They now work in schools, colleges, universities, hospitals, administrative offices, ministers, etc. Being economically independent not only improves her position both in the family and outside, but gives her mental satisfaction that she is also contributing to the family income. The main way to attain economic independence for a woman is to work and earn. By working outside home she not only earns her livelihood but also supplements the family income. After women started to work and earn, they have begun to enjoy better status in relation to men (Chaturvedi, 2004: 137).

Modern education and technology as well as the practice of birth prevention have freed modern women from the drudgery of home and children, and have afforded her opportunities of enjoying leisure. Modern education is expected to be a key factor in the process of change from constrained traditional to a modern emancipated mentality. Parents want their daughters to get so much education as will give them the utmost advantage in the marriage market. Girls have to be educated enough to have a job as, increasingly, young men from the middle classes prefer to marry such girls. The cost of urban living has made them realize that two incomes are better than one, so recently Muslim men are realizing the need for women's education. Education has modified domesticity it still retains a great significance for Muslim women. She has a great deal of authority in domestic sphere. With higher education and independent income the women's authority in this sphere increased, for she not only had her own income but also, the claim over her husband's income. Further, with the increase in her education, increased co-operation occurred between husband and

wife. The husband and wife have more commonly shared experiences and the woman is more of a partner in thought and action. Due to this sense of togetherness, the husbands communicate freely with their wives. From a mere wife, the woman tends to become her husband's companion. This sense of closeness and freer communication found amongst the younger couples was largely missing in the couples of the older generation, a change which alters the entire texture of a married family life. The married woman is not treated merely as an acquisition but as an individual with her own identity.

Marriage is another area where change becomes most evident. Amongst the Muslim, the marriage rules in theory are mainly intended to safeguard the interests of women, but in practice, the average woman gets neither the *mahr* nor can she refuse to marry nor initiate a divorce (other than under some specified conditions like impotency, lunacy etc.) But amongst the young women of today who have modern education and earning capability, *mahr* becomes an added economic asset. Being educated, they have also the advantage of understanding the Islamic and legal rules. They understand the full importance of *mahr* and unlike their uneducated sisters, do not free their husbands of the *mahr* money out of emotion. Comparatively, the uneducated unemployed Muslim women are losers and have an insecure standing in their married life. The husbands in their interest try to bring down the amount of *mahr* to something within their means. But this attempt is resisted by the girls, parents. Whatever be the amount of *mahr* the educated girl knows its importance and does not free her husband during his lifetime from *mahr* obligation. Hence, the educated woman is better secured due to her employment capability and *mahr* insurance. The educated Muslim women exposed to democratic politics, electronic and print media, are becoming aware of their rights and no longer prepared to accept what is being imposed on them in the name of religion. (Chaturvedi, 2004: 261-262).

4.5. Polygamy – an evil practice:

Among the educated sections of the population, there is the feeling that polygamy is an evil practice and many of the Indian Muslims now prefer monogamy. According to Syed Ameer Ali (1922:232), among the Indian Muslims, 95 men out of every hundred are at the present moment, by either conviction or necessity, monogamous. With the spread of education, segregation between the sexes is gradually disappearing. The number of the

women leaving *Purdah* or seclusion and taking active part in many national affairs is slowly but steadily increasing (Chaturvedi, 2004: 19).

With the advancement of modern education and the growing pace of economic activity, new middle class and the new educated upper class consider polygamy a social evil. New attitude towards polygamy and the present trend towards its decline among the upper class throughout the East to-day. Enlightened public opinion, whether in Iraq or Iran, Egypt or India, is decidedly against polygamy. This pressure of progressive public opinion against polygamy, which is acting as a powerful factor in reducing the practice, is due undoubtedly, as are other lines of advance, to the influence of modern education and the exposure to modern ideas through Western contact. As a result of modern education and contact with the West, he has a different conception of marriage the educated young man has a different conception of marriage and family life, and demands an educated wife as a companion. Not only education but the economic factor plays an important role against polygamy. Economic conditions which make it difficult for a man to support two or more households, and also more significantly, spread of education which has made women less willing to accept a polygamous marriage and husband less inclined to think such an arrangement desirable. Although in city and town life in the middle and upper classes, polygamy seems to be eventually doomed on economic grounds, it is surprising that among the poorer classes, in spite of their low economic level, polygamy often persists. Educated Moslem men are repudiating polygamy in the desire for a single marriage and united family life. Though the masses of Muslim women are helpless and inarticulate, a small enlightened minority of Muslim women is becoming an increasing force against polygamy and other social evils (Woodsmall, 1983: 115-124).

Polygamy and divorce bear a close relationship in regard to the problem of change. Just as polygamy is no longer considered quite respectable, so the Muslim form of easy repudiation of the wife, simply by the husband's thrice-repeated formula "*I divorce you*," is regarded as distinctly beyond the pale, and just as polygamy, has become a subject for adverse comment.

The divorce rate in India is not so high compared to western countries but it does not mean that marriages are more successful here. The reason behind low level of divorce rate is that it is looked down by the society. It is regarded as the sign of failure of marriage,

especially of women. She is treated as if she has committed some crime by divorcing her husband. In some communities, Muslims women did not have the right to divorce their husband they were divorced at just the pronouncement of "*I divorce you*" by their husband thrice and they could not do anything except to be the mute spectator. Now divorce is legally possible. As for divorce, a wife has in almost every Muslim country now the ability to get a divorce if she has reasonable grounds (<http://www.mapsofindia.com/culture/indian-women.html>).

The incidence of divorce was very negligible in the past, mainly because of the low status of women in the society and the very low level of educational background of females, which left divorced women incapable of supporting themselves. Current trends show that the divorce rate is increasing in the recent past, especially in urban areas. This clearly indicates that women are becoming more aware of their rights, and more assertive in maintaining their individual identity in their employment and personal earnings without being submissive to men. Recently Muslim Law Board has given right of divorce to women. After divorce women is entitled to get her "*Mahr*" for herself and her children's sustenance. In Hindu society women get maintenance for themselves and their children after divorce (<http://www2.hu-berlin.de/sexology/IES/india.html>).

4.6. The Purdah System:

In modern time, the *purdah* system is on its way out. Economic conditions in many families make it necessary for women to go out of their home, work and thus earn their livelihood to supplement the family income. As a result of these conditions they cannot observe seclusion or *Purdah*. The *purdah* system among the Muslims has been the subject of fierce controversies between the old, conservative school of thought and the new, enlightened sections of Muslims brought up under the influence of Western education and culture. The *purdah* practice amongst the Muslims is specifically meant to protect and seclude women from men and to seclude men from women and their families. As *purdah* stands today in the age of enlightenment, it can be regarded as coming in the way of normal life of a woman arresting her natural development. With the spread of education, segregation between the sexes is gradually disappearing, and the number of women leaving *purdah* or seclusion and taking active part in many national affairs (Chaturvedi, 2004: 18-19).

With the passage of time, the male attitude altered and increasing number of men now desire a wife not to inhabit the *jenana* but to give them company at home and outside. Many have wanted their wives to be educated and to have the capability to earn. These attitudinal changes amongst the Muslim males of younger generation affect the outlook of the older men. Some of the women, who had to strictly follow the *purdah* rules under their fathers' authority, utilized the leniency and liberal outlook of their husband and discarded the *burkha*. Outside their home town or their residential area, women could freely move about without *burkha* with or without escort. Thus, we find today that there is neither total preservation of the traditional *purdah* system nor its total elimination. The Muslim woman is motivated to change not only because of her own desire but also because of the change in the attitude of the males. The Muslim men are aware of the fast modernizing; non-Muslims also have in the past few decades accepted education of woman as a normal phenomenon. The Muslim men are aware of the benefits of educating the Muslim women in the family (Chaturvedi, 2004: 255-2260).

The effect of education goes deeper and effects changes in the role of young educated women. Though marriage and management of the home is considered to be the safest and surest way of life for a woman, yet we find that the age at marriage has gone up by ten years. The reasons for this are many, firstly with the spread of education the attitude of the Muslim men has changed and the demand for formally educated girls has gone up in the marriage market. Parents who aspire to get their daughters married have to give a thought to their education. In the sociological sense the education of the girls becomes very meaningful, because it not only delays their marriage but makes them potential earners. Though her education and a wider ranging contact with the world outside the home she emerges as an individual not totally dependent on the men of the family (Chaturvedi, 2004: 251-252).

Today rate of singlehood, the percentage of people living alone, is also increasing at a significant rate. The reasons for the growth of non-family or one-person households are many. Women outlive men. Many young people tend to postpone marriage. The changing attitude towards marriage can also be held responsible for the rising number of single

women and the rising age of marriage in contemporary society. Many women who opt for an education and good job do not find marriage a financial necessity (Krishna, 2007: 3-4).

Now that female education is on the increase to some extent more awareness is developing among them about certain essential reforms and there is more pressure on Muslim Personal Law board to consider some changes. Similarly, there is comparatively less awareness about family planning among Muslim women but things are changing. In matters of family planning too Islam is not responsible for slightly higher growth of population among Muslims today. Middle class Muslims practice family planning while it is lacking among the poorer and uneducated Muslims. As the size of middle class increases among Muslims the degree of family planning will also increase. Thus it is primarily, education and economic status especially of the women that can make a success of family planning (<http://ecumene.org/IIS/csss53.htm>).

Another important change that, was noted in respect of the husband-wife relationship. The relationship between husband and wife in early family was institutionally weak. Wife was considered to be an outsider. Today, the relations between husband and wife have definitely undergone some changes. Under former historical circumstances, husband's economic and social roles almost automatically gave him pre-eminence. Under modern conditions, the roles of men and women, particularly in urban areas, have changed so much that husbands and wives are potential equals. In urban areas, there has been a substantial increase in the number of middle and upper-class Muslim women working to supplement their husband's incomes. The traditional conception regarding the status and role of husband and wife are slowly changing in contemporary Muslim society. It is no longer to possible to assume that just because a man is a man, he is the boss. Yet there is some change in the relations between husband and wife which is evident from the fact that husband today gives greater weight to his wife's opinion in almost all important issues before taking final decisions. It should however, be remember that change in relation between husband and wife is found less among the rural families, uneducated Muslim couples and in joint families in comparison to families engaged in non-traditional occupation or in nuclear and educated families.

One of the reason for changing relationship between husband and wife is that woman today is no longer an immature girl at the time of marriage. Being older at marriage, she is better able to assert her will as well as her claims on her husband. In spite of this change, the traditional outlook on the husband-wife relationship is still so strong in our society that we cannot think of a change from patriarchal families to equalitarian families. As our family basically continues to be husband-dominant family, majority of wives still accept their subordinate position to their husbands as natural and look up to his superior knowledge and judgment. (Ahuja, 2004: 55-60).

Education has affected family in more than one way. It has not only brought change in the attitudes, beliefs, values and ideologies of the people but has also created and aroused the individualistic feelings. In India, education is spreading not only among the males but among the females too. The children today enjoy more freedom. As education becomes a priority for young Muslims, more and more doors opening to them. Armed with good degrees, Muslim youths are now knocking on the doors of public sectors enterprises such as the Indian Railways and banks. The educated Muslim women exposed to democratic politics, electronic and print media, are becoming aware of their rights and no longer prepared to accept what is being imposed on them in the name of religion in traditional family. Middle and upper-class Muslim families in urban areas were undergoing a dramatic transformation because the younger generation is questioning power issues, traditional roles, hierarchical relationships, obligations, loyalty, and deference for kinsmen and elderly. With changing times, family structure, functions, traditional division of labor, and authority patterns have altered, favoring more egalitarian relations between the husband and the wife and also a move toward more shared decision-making patterns between parents and children. Despite these changes, the fact remains that most individuals continue to value and give top priority to the family, and families continue to maintain strong kinship bonds and ties (<http://family.jrank.org/pages/863/India-Conclusion.html>).

CHAPTER - 5

CONCLUSION

CHAPTER - V

Conclusion

The present study was undertaken to study the changing patterns of Muslim family in India. It is noted that family has undergone some radical changes in the past half a century. Its structure has changed, its functions have been altered and its nature has affected. Various factors- social, economic, educational, legal, cultural, scientific, technological, etc. have been responsible for this. In a changing world in which small societies have been exposed to television and cd's, computers, economic changes, technology, tourism, the structure and function of the family has been changing. Industrialization and urbanization have brought the economic and the socio-cultural changes in our society in general and family in particular. It has resulted in the migration of people from rural to urban areas, spread of education. Education has affected family in more than one way. It has not only brought change in the attitude, beliefs, values and ideologies of the people but has also created and aroused the individualistic feelings. In India, education is spreading not only among the males but among the females too.

Education played a major role in changes in the family from the extended type to the nuclear type. With the advent of urbanization and modernization, younger generations are turning away from the joint family form. Family is cut to size and is now the smallest unit. Now the educated section of the Muslim population has begun to develop a dislike for the joint family system which restricts the freedom of the individual and suppresses individuality. As a result they are moving towards nuclear families. Because of economic changes, television, movies, education, the internet, tourism, commerce, the traditional family systems of small societies are no longer totally dependent on subsistence systems such as hunting, gathering or even agriculture. The numbers of nuclear families are increasing in urban areas in most developing societies. The reduction of the family size could be attributed partly to economic difficulties, low levels of income, the high cost of living, the costs of education of children and the desire to maintain a better standard of living, which is best achieved within the more affordable smaller size family. Consequently, the nuclear family with its parents and

children, became the model of society and soon ruled out the traditional, extended family usually constituting three generations. Now young people are increasingly choosing their spouses rather than having to submit to arranged marriages, women are entering the work force, traditional family roles have changed, and the father no longer has absolute power in the family. There is a trend toward more families becoming structurally nuclear, even in small societies. But it may be misleading to conclude that families throughout the world are "becoming ...nuclear" functionally in the sense of the North American and Northern European nuclear family. Even though the numbers of nuclear families are increasing in most societies, they still maintain very close relations with their kin.

The joint family has been associated with the subordination of Muslim women. Women are assigned all the domestic responsibilities and kept busy with cooking, cleaning, washing, and child rearing roles. They are given the status of sex partners but not the full legal and other rights of wives. The emerging family is doing much to change this. The women are gaining a certain power. Coupled with this is the fact that child marriages have been replaced by adult marriages and the fact that education for girls is spreading rapidly. Many Muslim women have become salary earners in the present age. They have also started taking up jobs in the expanding economy and their salary is used for meeting the family expenses and raising the quality of life. In such families, men have come to treat women on terms of equality. There is change in the relations between husband and wife today. In the traditional household, the wife had a sub-ordinate voice of decision-making. But in the contemporary household, the wife plays a more active role. Therefore, from the dependent women being considered as the essential burden that society has to bear for its collective self-sustenance, Muslim women in families are now able to sustain themselves through their professional skills and therefore the educated women remaining dependent on male members of the family has now become a matter of choice rather than compulsion. The change in the relations between husband and wife is also evident from the fact that earlier in the traditional family, husband and wife never used to go together for walks or social visits, now they are often found together particularly in the urban areas. Women are seen today taking food with their husbands, whereas in the traditional Muslim family husbands and wives never ate together.

In the traditional Muslim family, the patriarch was virtually all powerful. It was he who decided the type of education to be imparted to children, the occupation they had to take to, and even the selection of mates for them. He was not obliged to consult the young children on any issue. But now, with the advent of urbanization and modernization, younger generations today enjoy more freedom. The authority is shifting from the patriarch to the parents of the children who consult their youngsters on all important issues before taking any decisions about them.

Marriage is an important social institution. It is a relationship, which is socially approved. Islam looks upon marriage as "*sunnah*" (an obligation) which must be fulfilled by every Muslim. Today, marriage is still considered important and necessary, and only few individuals

remain unmarried by choice. Goals of marriage are, however, undergoing changes especially for the urban and educated sections of the population. Earlier majority of the marriages in India are fixed or arranged by parents or elders. Among the Muslims, the parents, elders or *wali* (guardian) arrange a marriage. Though majority of marriages continue to be arranged by parents/elders/*wali*, the pattern of choosing one's spouse has undergone some modifications today. Among urban educated Muslims, arranged marriage with the consent of the boy and the girl is often the most preferred pattern. Marriages are even arranged through newspaper advertisement for both the boy and the girl.

Rites constitute an important part of marriage in India. We find variations in rites not only in terms of religion but also in terms of caste, sect and rural or urban residence. Muslim marriage is not a sacrament. Rather, it is a contract, which can be terminated. Among the Muslims, the marriage rituals show variation by sect and region. Some rites of the Shia sect of the Muslims differ from the Sunni, a sect among the Muslims. However, the essential ceremony of Muslim marriage is known as the *nikah*. Today marriage rites have been condensed to a great extent. The industrialization along with the expansion of education is broadening the outlook of the people to new values. The Special Marriage Act of 1954 provides for secular and civil marriage before a registrar. This Act applies to all Indian citizens who chose to make use of its provisions, irrespective of religious affiliations. Civil marriage enables persons to avoid the expense of traditional weddings. However, weddings continue to be an expensive affair for a large majority of people.

Now education has helped in raising the age at marriage. Because of spread of modern education the attitude of the Muslim men has changed and the demand for formally educated girls has gone up in the marriage market. Today, that is changing. Globalization, liberalization, the decay of the institution of marriage and a growing emphasis on education has helped to raise the status of Muslim women in family.

The institution of mahr is also changing. Among the Muslims some people demand dowry. Often, discord in family is caused because of the continuous demand for dowry even after marriage. This may lead to divorce. But today old order is changing as education broadening the outlook of the people. There are progressive young people who voice their strong opinion against dowry and marry without it.

Among the Muslims, marriage is a contract and divorce is allowed. Islam has given right to women to obtain divorce from their husbands as they are equal to them. Muslim law provides for different types of divorce of which *talaq* and *khol* need special mention. In many communities of the Indian population, divorce even when it is required is not sought, despite legal provisions. Even in cases where women have turned to the legal system for help, law is not

very clear about the rights of a woman in her marriage. . Even among the Muslims, where divorce has been permitted for a long time, laws favor men more than the women. But now there are many ways open to a woman to secure her freedom from an unhappy marriage. The Dissolution of Muslim Marriage Act ,1939, provides the various grounds enabling the wife to seek divorce from her husband, and has helped to raise the status of Muslim women in family.

Islam has allowed polygyny. A Muslim man can have as many as four wives at a time, provided all are treated as equals. However, it seems that polygynous unions have been restricted today. Because of modernization, industrialization, it is on the way out. Many educated Muslims are against this practice. It is vanishing phenomenon and no longer such a peculiar feature of Muslim social life in India. Further, attitude of the Muslims towards family Planning is also changing. Majority of Muslims are aware with the family planning methods and they are adopting them.

Today, the very basic institutions of the social system like *purdah* are challenged. *Purdah* rendered the Muslim woman incapable of contributing to, and participating in a host of

activities which are suited to her interests and her talent. Thus, very few Muslim women especially in India are to be found in the field of music or fine arts. In contrast today, the observance of *purdah* is currently undergoing almost revolutionary changes. As *purdah* stands today as coming in the way of normal life of a woman arresting her natural development. Now educated Muslim youths desire a wife without *burkha*, who give them company at home and outside.

On the basis of above conclusion it can be said that definitely the patterns of Muslim family are changing in all the directions. Its structure has changed. Muslim people are keen towards change but despite the continuous and growing impact of urbanization, secularization and westernization, they still keeping their social, religious and moral values, which remains the primary social force in their lives. Loyalty to family is a deeply held ideal for almost everyone.

In the modern era, education is spreading fast in all countries including Muslim countries. Education makes women far more aware of their rights than illiterate women. But still, the main problem is that, when the people opt for change, they are given some provision but not adequate especially for women in the Muslim family. As women assert their rights and struggle to find a place of honor in the society, the society which is under the domination of men, reacts quite sharply. What is shocking is that women are being denied even their well defined Islamic rights. It is important to note that Islam is the first religion in the world which recognized women as legal entity and gave her all rights that man enjoyed. The Muslim community cannot progress if their women remain confined to house only. In fact, what Islam has already given her by way of rights is being given to her now by the modern society. However, Muslim women are in more disadvantageous position in Muslim Personal Law as practiced in India in matters of marriage, divorce and maintenance. But the Uniform Civil Code seems to be a remote dream for equal justice to all women irrespective of caste and religion in the family.

Suggestions:

The points on which Muslim personal law needs to be reformed have already been identified by scholars and need to be given serious attention. The most striking thing about the law as it exists in India (and other countries) today is that it is singularly male oriented. Whatever goes in favour of men is considered most sacred. Thus the Quranic phrase that a man can divorce his wife is accepted as Holy writ while the statement that divorce is “the most detestable thing in the eyes of God” is completely ignored. So it is with polygamy. The permission for a man to have four wives at a time is regarded as divine dispensation while the conditions attached to this permission are hardly ever mentioned.

1. Reformists should take into consideration the difference which exists between the rights of men and women in the matter of divorce. Thus a man can attain instant divorce by paying a woman her dower or by bullying her into “forgiving” it but a woman can only end an unwanted marriage by going to court.
2. The so –called “triple divorce,” in which divorce given in anger or under duress is binding, making remarriage to the same person conditional on an intervening marriage actually consummated, is an obvious hardship on both parties. The original intention of making this a deterrent to hasty divorce was commendable but there is no doubt that it can be an emotional trauma for both husband and wife, especially if the husband repents his action and the wife is unwilling to marry someone else.
3. There is a need for rational fixing of the amount of *mahr*. This should be tailored to the bridegroom’s status so that it is not so exorbitant as to keep him either from divorcing a woman or make him force her to “forgive” it. Some percentage of man’s property or earnings at the time of divorce should be fixed as the wife’s rightful share and half amount of dower should be paid at the time of nikah.
4. While, the Muslim law of inheritance is fair, the widow’s mite is too low. The presumption must have been that she would be supported by her sons and therefore there was no need for her to be provided enough to live independently. Adequate provision must, therefore, be made for her to be able to lead an independent existence if she so desires.
5. Muslim Nikahnama should be registered in the office of Qazi so that the information may be obtained about marriages and divorces. It should be fully computerized.

6. In the Nikahnam, a sentence should also be included that women should have the right to take divorce from husband.
7. Triple divorce should be baned.
8. Final decision should be taken by the Qazi court.
9. In every district, proper office of Qazi should be maintained by the government.
10. Share of wife in moveable and immoveable property should be given according to Shariat Law.
11. Above all, there is a need for the codification of Muslim law. The diversities of legal principles which enjoin different codes on Muslims, partly because they are governed by the different schools of Muslim law and partly because they live in different parts of the country must be removed. These make for differences of privileges within the Muslim community itself and are not always conducive to impartial justice. To ensure proper justice codification is necessary. Thus, it is in a change of attitudes that salvation lies, not only for the community but the whole country.

Bibliography

- A'la Maududi, Abul. 1974. *Purdah and the Status of Woman in Islam*. Delhi: Al-Ash'ari Markazi Maktaba Islami.
- Abdal' Ati, Hammudah. 1977. *The Family Structure in Islam*. American Trust Publications.
- Abd al' Ati, Hammudah. 1981. *Islam in Focus*. Aligarh: Crescent Publishing Company.
- Abraham, Francis M. 2006. *Contemporary Sociology: An Introduction to Concepts and Theories*. New Delhi: Oxford University Press.
- Ahmad, Imtiaz. 1976. *Family, Kinship and Marriage among Muslims in India*. New Delhi: Manohar Book Service.
- Ahmad, Imtiaz. 1987. *Family, Kinship and Marriage among Muslims in India*. United States of America: South Asia Books.
- Ahmad, Imtiaz. 2003. *Divorce and Remarriage among Muslims In India*. New Delhi: Manohar Publishers and Distributors.
- Ahmad, Naseem. 2003. *Women in Islam*. Vol.II. New Delhi: A.P.H Publishing Corporation.
- Ahmad, Naseem. 2003. *Women in Islam*. Vol-I, New Delhi: A.P.H Publishing Corporation.
- Ahuja, Ram. 1993. *Indian Social System*. Jaipur and New Delhi: Rawat Publications.
- Ahuja, Ram. 2004. *Society in India*. Jaipur and New Delhi: Rawat Publication.
- Ajijola, Alhaji A. D. 1999. *The Concept of Family in Islam*. New Delhi: Adam Publishers and Distributors.
- Allana, Mariam. 2000. *Muslim Women and Islamic Tradition: Studies in Modernisation*. New Delhi: Kanishka Publishers, Distributors.
- Bano, Afsar. 2003. *Status of Women in Islamic Society*. New Delhi: Anmol Publications Pvt. Ltd.
- Baveja, Malik Ram. 1988. *Women in Islam*. Delhi: Renaissance Publishing House.
- Brijbhushan, Jamila. 1983. *Muslim Women: In Purdah and Out of It*. New Delhi: Vikas Publishing House Pvt Ltd.

- Chaturvedi, Archana. 2004. *Muslim Women and Development*. New Delhi: Commonwealth Publishers.
- Chaturvedi, Archana. 2004. *Muslim Women and Law*. New Delhi: Commonwealth Publishers.
- Chaturvedi, Archana. 2004. *Muslim Women and Society*. New Delhi: Commonwealth Publishers.
- Chaturvedi, Archana. 2004. *Muslim Women from Tradition to Modernity*. New Delhi: Commonwealth Publishers.
- Chaturvedi, Archana. 2004. *Muslim Women in Global Perspectives*. New Delhi: Commonwealth Publishers.
- Dasgupta, Sanjukta and Lal, Malashri. 2007. *The Indian Family in Transition: Reading Literary and Cultural Texts*. New Delhi: Sage Publications India Pvt Ltd.
- Engineer, Asghar Ali. 2001. *Islam, Women and Gender Justice*. New Delhi: Gyan Publishing House.
- Enoress, Gerhard. 2002. *Islam: An Historical Introduction*. II ed. Edinburgh: Edinburgh University Press.
- Ephroz, Khan Noor. 2003. *Women and Law: Muslim Personal Law Perspective*. Jaipur and New Delhi: Rawat Publications.
- Fyzee, Asaf A. A. 1949. *Outlines of Muhammadan Law*. New Delhi: Oxford University Press.
- Galwash, Ahmad A. 2001. *A Handbook of Muslim Belief*. New Delhi: Goodword Books.
- Gisbert S.J, Pascal. 1972. *Fundamentals of Industrial Sociology*. New Delhi: Tata McGraw-Hill Publishing Co. LTD.
- Haralambous, Michael. 2003. *Sociology: Themes and Perspectives*. New Delhi: Oxford University Press.
- Hidayatullah, M and Hidayatullah, Arshad. 1990. *Mulla's Principles of Mahomedan Law*. Bombay: N.M. Tripathi Private LTD.
- Husni, Ronak and Newman, Daniel L. 2007. *Muslim Women in Law and Society*. U.S.A: Routledge.

- Hussain, Imtiyaz. 1989. *Muslim Law and Customs (with a Special Reference to the Law as Applied in Jammu and Kashmir)*. Kashmir: Srinagar Law Journal Publication.
- Hussain, Shujaat. 2004. *Family Life under Islam*. New Delhi: Anmol Publications PVT. LTD.
- Johnson, Harry M. 1966. *Sociology: A Systematic Introduction*. New Delhi: Allied Publishers Limited.
- Kaila, H.L. 2005. *Women, Work and Family*. Jaipur and New Delhi: Rawat Publications.
- Kapadia, K. M. 1972. *Marriage and Family in India*. New Delhi: Oxford University Press.
- Khan, Maulana Wahiduddin. 1995. *Women between Islam and Western Society*. New Delhi: The Islamic Centre.
- Khan, Mohammad Shabbir. 1996. *Status of Women in Islam*. New Delhi: A.P.H Publishing Corporation.
- Khan, Qamaruddin. 1990. *Status of Women in Islam*. New Delhi: Sterling Publishers Private Limited.
- Krishna, Sangeeta. 2007. *Single Women: Changing Perceptions in India*. Delhi: The Women Press.
- Lateef, Shahida. 1990. *Muslim Women in India: Political and Private Realities*. New Delhi: Kali for Women.
- Mahmood, Tahir. 1972. *Family Law Reform in the Muslim World*. Bombay: M.M Tripathi PVT.LTD.
- Mandelbaum, David G. 2008. *Society in India* (vol-I Continuity and Change, vol-II Change and Continuity). Mumbai: Popular Prakashan.
- Maryam, Jameelah. 1976. *Islam and the Muslim Women today*. Delhi: Crescent Publishing.
- Muhammad 'Ali, Maulana. 1973. *The Religion of Islam*. Lahore-Pakistan: The Ahmadiya Anjuman Isha 'at Islam.
- Muncie, John., Wetherell, Margaret., Dallos, Rudi and Cochrane, Allan. 1995, *"Understanding the Family"*, London. Thousand Oaks. New Delhi: Sage Publications.
- Ogburn, William F. and Nimkoff, Meyer F. 1964. *Sociology*. I ed. New York: Houghton Mifflin Company.
- Omran, Abdel Rahim. 1992. *Family Planning in the Legacy of Islam*. London: Routledge.
- Pearl, David. 1979. *A Text book on Muslim Personal Law*. ii ed. London: Croom Helm Ltd.

- Poya, Maryam. 1999. *Women, Work and Islamism: Ideology and Resistance in Iran*. London and New York: Zed Book.
- Prasad, Gitanjali. 2006. *The Great Indian Family: New Roles Old Responsibilities*. New Delhi: Penguin Books India.
- Quah, Stella R. 2009. *Families in Asia: Home and Kin*. iind edition, USA and Canada: Routledge.
- Qureshi, M. A. 1995. *Muslim Law of Marriage, Divorce and Maintenance*; New Delhi: Deep and Deep Publications.
- Rahim, Abdur M.A. 1994. *The Principles of Islamic Jurisprudence*; II edition, New Delhi: Kitab Bhawan.
- Rahim, Abdur M.A. 1994. *The Principles of Islamic Jurisprudence*; second edition; New Delhi: Kitab Bhawan.
- Rahman, Afzular. 1986. *Role of Muslim Women in Society*; first edition, London: Seerah Foundation..
- Rahman, Fazlur. 2002. *Islam*. II ed. Chicago and London: University of Chicago Press.
- Rao, Shankar C.N. 2004. *Sociology of Indian Society*, New Delhi: S.Chand and Company Ltd.
- Serajuddin Muhammad, Alamgir. 1999. *Shari'a Law and Society Tradition and Change in South Asia*. New Delhi: Oxford University Press.
- Shabbir, Mohammad. 1988. *Muslim Personal Law and Judiciary*. Allahabad: The Law Book Company PVT. Ltd.
- Shah, Niaz A. 2006. *Women, the Koran and International Human Rights Law: The Experience of Pakistan*. Vol-4, Leiden/Boston: Martinus Nijhoff Publishers.
- Shaikh, N.M. 1991. *Women in Muslim Society*, New Delhi: Kitab Bhavan.
- Sharma, Bela Rani and Pruthi, Raj. 1995. *Islam and Women*. New Delhi: Anmol Publication Pvt. Ltd.
- Sharma, K. K. 2007. *Comparative Status of Muslim Women*. Jaipur: Mangal Deep Publications.
- Shaukat Ali, Zeenat. 1987. *Marriage and Divorce in Islam: An Appraisal*. Bombay: Jaico Publishing House.

- Siddh, Kaushal K.1974. *Family Planning: The Religious Factor*. New Delhi: Abhinav Publications.
- Siddiqui, H.Y. 1987. *Muslim Women in Transition: A Social Profile*. New Delhi: Harnam Publications.
- Siddiqui, H.Y. 1987. *Muslim Women in Transition: A Social Profile*. New Delhi: Harnam Publications.
- Siddiqui, Zakia A. and Zuberi, Anwar Jahan. 1993. first edi. *Muslim Women: Problems and Prospects*. New Delhi: M D Publications Pvt. Ltd.
- Sikri, Rehana. 1999. *Women in Islamic Culture and Society: A Study of Family, Faminism and Franchise*. New Delhi: Kanishka Publishers Distributors.
- Srinivas, M.N. 1985. *India: Social Structure*. Delhi: Hindustan Publishing Corporation (India).
- Subamma, Malladi. 1988. *Islam and Women*. New Delhi: Sterling Publishers Private Limited.
- Titus, Murray T. 2005. *Islam in India and Pakistan (A Religious History of Islam in India and Pakistan)*. New Delhi: Munshiram Manoharlal Publishers Pvt.Ltd.
- Waddy, Charis. 1976. *The Muslim Mind*. London and New York: Longman Group LTD.
- Woodsmall, Ruth Frances. 1936. *Moslem Women enter a New World*. London: Allen and Unwin.
- Woodsmall, Ruth Frances. 1960. *Women and the New East*. Washington, D.C: The Middle East Institute.
- Woodsmall, Ruth Frances. 1983. *Muslim Women Enter A New World*. Delhi: Bimla Publishing House.
- Yamani, Ahmad Zaki.2005. *Women in Islam*. Al Furqan Islamic Heritage Foundation.

Webliography and Journals:

(<http://muslim-canada.org/muspersonallaw9.html>).

<http://ecumene.org/IIS/csss53.htm>

<http://ecumene.org/IIS/csss53.htm>

<http://family.jrank.org/pages/863/India-Conclusion.html>

<http://molly.kalafut.org/marriage/marriage-types.html>

<http://nos.org/331courseE/L-13%20FAMILY.pdf>

http://www.grandmascraftguides.com/Family_Corner

<http://www.mapsofindia.com/culture/indian-women.html>

<http://www.mapsofindia.com/culture/indian-women.html>

<http://www.thelaboroflove.com/articles/what-is-the-definition-of-marriage>

<http://www2.hu-berlin.de/sexology/IES/india.html>

www.pathways.in/admission

Farhat Yasmeen and Shadbano Ahmad: *A Sociological Study of Marriage and Divorce in Islamic Law*, *Journal: Islam and The Modern Age*: Vol. 20, Nov-1989.

Asghar Ali Engineer: *Prophet Mohammad (S.A.W.) As A Liberator*, *Journal: Islam and The Modern Age*: Vol. XX; No. 2, May 1989.

Dr. Majid Ali Khan: *Family Life in Islam*, *Journal: Islam and The Modern Age*: Vol. X, No.2 May 1979.

S. Vahiduddin: *The Place of Woman in the Qur'an*, *Journal: Islamic Culture*, Vol. LXX, No. 3, July 1996.

Dr. Mahmoud Hoballah: *The Challenge of Modern Ideas and Social Values to Muslim Society*, *The Islamic Literature – A Monthly Journal*; Jan. – Feb. 1959.

Syed Mubin Zehra: *Family and Household: The Mughal Context*, *Journal: Islam and The Modern Age*: Vol. XXXIII, No.2 May 2002.

Lamia L. al Faruqi: *Women's Rights and the Muslim women*, *Journal: Islam and The Modern Age*: Vol. III, No.2 May 1972.

Doreen Hinchcliffe: *Polygamy in Traditional and Contemporary Islamic Law*, *Journal: Islam and The Modern Age*: Vol. I; No.3, Nov. 1970.